United States Court of Appeals
for the Second Circuit

APPENDIX

ORIGINAL WITH PROOF OF SERVICE

77-6091

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FILED
FEB 22 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

vs.

E.L. AARON & CO., INC., LAWN-A-MAT CHEMICAL & EQUIPMENT CORP., EDWARD L. AARON, PETER E. AARON, NORMAN LAWRENCE SCHREIBER, DONALD DARWIN JACOBSON, DANIEL DORFMAN, FERNANDO ERAZO,

Defendants,

and

PETER E. AARON,

Defendant-Appellant.

ON APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX
(Volume I of II -- Pages A-1 - A-429)

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PLAINTIFFS

SECURITIES AND EXCHANGE COMMISS-
ION

Perm Injunct 10-8-76

DEFENDANTS Gagliardi, J.

E.L. AARON & CO., INC. Perm Injunct 5/23/76
LAWN-A-MAT CHEMICAL &
EQUIPMENT CORP.
AARON, EDWARD L. [illegible]
AARON, PETER E. Perm Injunct 5/24/77
SCHREIBER, NORMAN LAWRENCE [illegible]
JACOBSON, DONALD DARWIN [illegible]
KORFMAN, DANIEL Perm Injunct [illegible]
ERAZO, FERNANDO Perm Injunct 3/3/75

CAUSE

Viol. of S.E.C. Act of 1933 and 1934. rg

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(Norman Lawrence Schreiber;Donald Dar-
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	FEB 26 1976	USA		JS-5	
				JS-6	5-24-77

76-0907 Judge Gagliardi S.E.C. -vs- E.L. Aaron & Co.Inc. et al. 76-0907

DATE	NR.	PROCEEDINGS
02-26-76	1	Filed complaint and issued summons.
02-026-76	2	Filed Pltffs Affdvt&Order for appt to make service-upon defts. pursuant to Rule 4(c)FRCP of Summons&Complaint by Tucker,Mandel,Globerman,Valery, Cataland,Lindsay,etc. Clk.
03-09-76	3	Filed Pltff's affdct&Notice of motion re:order of preliminary injunction enjoining Defts.E.L.Aaron&Co.Inc.,Edward L.Aaron,Peter E.Aaron&Norman Lawrence Schreiber from further violations of Sec.Act of 1933,etc.ret.3/16/76.
03-09-76	4	Filed Affdvt of Service by Thomas E.Valery for pltff pf copies of Notice of motion for Preliminary Injunction&affdvt&Memorandum of law in support of defts. Lawn-A-Mat Chemical &Equipment Corp&Daniel Dorfman by Daniel Dorfman on 3/1/76.
03-09-76	5	Filed affdvt of Service by Remo Catalano for pltff on 2/26/76 of copies of Notice of motion for Preliminary Injunction&affdvt&Memorandum of Law in support on defts.E.L.Aaron&Co.Inc.,Edward L.Aaron,Peter E.Aaron,Norman Lawrence Schreiber and Donald Darwin Jacobson by Martin Kaplan,US Courthouse; also service on Fernando Erazo by personally handing such documents to same personally on 2/26/76.
03-09-76	6	Filed Memorandum of Law in support of pltff's motion for preliminary injunction.
03-15-76	7	Filed ANSWER of Deft.E.L.Aaron&Co.Inc. BLG
03-15-76	8	Filed " " " Norman Lawrence Schreiber BLG
03-15-76	9	Filed " " " Donald Darwin Jacobson BLG
03-15-76	10	Filed " " " Peter E.Aaron BLG
03-15-76	11	Filed " " "Edward L.Aaron BLG
03-31-76	12	Filed Judgment of Permanent Injunction of Fernando Erazo by Consent.Ordered that deft.Erazo,etc.are permanently enjoined from directly or indirectly employ any device ,scheme or artifice to defraud,etc.Further ordered that deft. Erazo make himself available and respond to any subpoena or notice to take depositionat request by SEC.Gagliardi,J.JUDGMENT ENTERED.Clk(mn)
04-13-76	13	Filed Summons with affdvt of service by Remo Catalano for pltff upon all defts (except Lawn-A-Mat Chemical&Equipment Corp&Daniel Dorfman) on 2/26/76 & Fernando Erazo same date,3 p.m. Affdvt of service by Thomas E.Valery for pltff upon defts.Lawn-A-Mat Chemical & Equipment Corp&Daniel Dorfman on 3/1/76,5:10 p.m. approximately.
05-04-76	13	Filed Affdvt of acknowledgment by Fernando Erazo ,deft of certified copy of Final Judgment of Permanent Inmunction against same.
[illegible]	14	Filed Final Judgment of permanent injunction of Deft.Daniel Dorfman by consent. Gagliardi,J.JUDGMENT ENTERED. Ent.5/25/76
[illegible]	15	Filed Final Judgment of permanent injunction of deft.E.L.Aaron&Co,Inc.by Consent. Gagliardi,J.JUDGMENT ENTERED.Clk(~~mn~~) Ent.6/1/76
05-28-76	16	Filed Final Judgment of Permanent Injunction of deft.Edward L.Aaron by Consent. Gagliaddi,J.JUDGMENT ENTERED.Clk.(~~mn~~) Ent.6/1/76
05-18-76	17	Filed Final Judgment of Permanent Injunction of Norman Lawrence Schreiber by Consent,Gagliardi,J.JUDGMENT ENTERED.Clk(~~mn~~) Ent.6/1/76
5-29-76	18	Filed Final Judgment of permanent injunction of Donald Darwin Jacobson by Consent. Gagliardi,J. JUDGMENT ENTERED. Clk (~~mn~~) Ent.6/1/76
[illegible]	19	Filed ANSWER of Deft.Peter E.Aaron. CHH
08-03-76	20	Filed Affdvt of Peter Aaron in opposition to pltff's motion for preliminary injunction.
08-19-76	21	Filed 1st set of interrogs propounded to pltff by deft.Peter Aaron.
08-26-76	22	Filed Affdvt of Acknowledgment by Edward L.Aaron for pltff with certified copy of Final Judgment of Permanent Injunction.,signed 5/28/76.
08-26-76	23	Filed Affdvt of Acknowledgment by Edward L.Aaron for pltff with " " of Final Judgment of Permanent Injunction against E.L.Aaron &Co.Inc.on 6/1/76.
08-26-76	24	Filed Affdvt of Acknowledgement by Donald Darwin Jacobson for Pltff of certified copy of Final Judgment of Permanent Injunction on 5/28/76.
08-26-76	25	Filed Affdvt of Acknowledgment by Norman Lawrence Schreiber of certified copy of

JUDGE [illegible]

76 Civ.907 SEC VS. E.L. AARON & CO.INC. et al **76 Civ.9**

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS pg.3
08-26-76	(contd)Final Judgment of Permanent Injunction on May 28,1976.
08-26-76	Filed Pltff's Notice to take deposition of Dan Brescher.
08-26-76	Filed " " " " " " Peter E.Aaron
09-17-76	Filed pltff. Commission's Answers to deft. Peter E. Aaron's first set of interrogs.
09-21-76	Filed Defts. Notice of Deposition of Milton Kean Pursuant to Rules 26 and 30 of the F.R.C.P. at 3:00 P.M. on 10-04-76.
09-28-76	Filed Affdvt of acknowledgment by Daniel Dorfman . of Copy of Final Judgment of Permanent Injunction on 6/10/76.
10-08-76 ,	Filed Final Judgment of Permanent Injunction of Lawn-A-Mat Chemical & Equipment Corp by Consent. Gagliardi,J. JUDGMENT ENTERED.Clk (mn) Ent.10/8/76
10-19-76	Filed Deposition of Peter Aaron (mn)
10-19-76	Filed Deft.Peter Aaron notice to take deposition of Fernando Erazo.
11- 01-76	Filed Pltff's notice to take deposition of Edward L.Aaron.
11-10-76	Filed Letter from SECdated 11/9/76 to Charles Hecht,Esq. of withdrawal of notice to take deposition of Edward L.Aaron .
11-10-76	Filed Affdvt of Acknowledgment by Daniel Dorfman ,deft of certified copy of Final Judgment of Permanent Injunction on 10/8/76.
12-09-76	Fld Pltff's notice to take deposition of Silberman;Kaplan&Strauss.
12-13-76	Fld Pltff's notice to take deposition of Philip Shapiro.
12-27-76	Filed pltff's notice of deposition of Stanley Gordon on 12-28-76.
01-06-77	Fld Principal issues submitted on behalf of deft.Peter E.Aaron.
01-06-77	Fld Proposed Findings of fact and conclusions of law submitted on behalf of deft Peter E.Aaron.
01-10-77	Fld Principal issues submitted on behalf of deft.Peter E.Aaron.
01-11-77	Trial begun with Non-Jury before Gagliardi,J.
01-12-77	" contd.
01-13-77	" "
01-14-77	" " and concluded. Decision reserved.
02-02-77	Filed Memorandum of Law of Deft.Peter Aaron.
02-04-77	Filed Pltff's Proposed Findings of Fact and Conclusions of Law.
02-04-77	Filed " Memorandum in support of Proposed Findings of Fact&Conclusions of Law.
02-09-77	Filed Deft Peter Aaron Reply Memorandum.
02-10-77	Filed Pltff's Reply Brief.
04-13-77	Filed transcript of record of proceedings, dated 01-11-12-13-14 77
04-15-77	Filed transcript of record of proceedings, dated 01-11-77
04-15-77	Filed [illegible] proceedings, dated 01-12-77
04-15-77	[illegible] 01-13-77
04-15-77	[illegible] 01-14-77
04-15-77	Filed Summaries of depositions of Donald Jacobson,Kaplan,Strauss,Gordon,Silberma Firrinciello&Shapiro submitted by Deft.Peter Aaron.
04-15-77	Filed Proposed Findings of Fact&Conclusions of law submitted on behalf of deft. Peter E.Aaron.
04-15-77	Filed Deft.Peter E.Aaron Synopsis of principal cases and principal issues.
04-15-77	Filed Principal issues submitted on behalf of Deft.Peter E.Aaron
05-05-77	Filed OPINION# 45870. SUBMIT JUDGMENT ON 5-Day's Notice .Gagliardi,J. m/n
05-24-77	Filed Final Judgment of permanent Injunction of Peter E.Aaron,Deft. Ordered that deft Peter E.Aaron,agents,etc. are permanently enjoined from directly or ind ectly in absence of any applicable statutory exemption as indicated. Court shall retain jurisdiction of this matter for all purposes.Gagliardi,J. JUDGMENT ENTERED.Clk m/n Ent.5/24/77
06-02-77	Filed Deft.Peter A.Aaron's notice of appeal from final judgment of permanent injunction entered on 5/24/77. (mailed copy to William D.Moran,Adm.26 Federal Plaza,NY10007)

(contd pg.4)

DATE	PROCEEDINGS pg.3
08-26-76	(contd)Final Judgment of Permanent Injunction on May 28,1976.
08-26-76	Filed Pltff's Notice to take deposition of Dan Brescher.
08-26-76	Filed " " " " " " Peter E.Aaron
09-17-76 ✓	Filed pltff. Commission's Answers to deft. Peter E. Aaron's first set of interrogs.
09-21-76	Filed Defts. Notice of Deposition of Milton Kean Pursuant to Rules 26 and 30 of the F.R.C.P. at 3:00 P.M. on 10-04-76.
09-28-76	Filed Affdvt of acknowledgment by Daniel Dorfman. of Copy of Final Judgment of Permanent Injunction on 6/10/76.
10-08-76 ,	Filed Final Judgment of Permanent Injunction of Lawn-A-Mat Chemical & Equipment Corp by Consent. Gagliardi,J.
	JUDGMENT ENTERED.Clk (mn) Ent.10/8/76
10-19-76 ✓	Filed Deposition of Peter Aaron (mn)
10-19-76	Filed Deft.Peter Aaron notice to take deposition of Fernando Erazo.
11-01-76	Filed Pltff's notice to take deposition of Edward L.Aaron.
11-10-76	Filed Letter from SEC dated 11/9/76 to Charles Hecht,Esq. of withdrawal of notice to take deposition of Edward L.Aaron .
11-10-76	Filed Affdvt of Acknowledgment by Daniel Dorfman ,deft of certified copy of Final Judgment of Permanent Injunction on 10/8/76.
12-09-76	Fld Pltff's notice to take deposition of Silberman,Kaplan&Strauss.
12-13-76	Fld Pltff's notice to take deposition of Philip Shapiro.
12-27-76	Filed pltff's notice of deposition of Stanley Gordon on 12-28-76.
01-06-77 ✓	Fld Principal issues submitted on behalf of deft.Peter E.Aaron.
01-06-77 ✓	Fld Proposed Findings of fact and conclusions of law submitted on behalf of deft Peter E.Aaron.
01-10-77 ✓	Fld Principal issues submitted on behalf of deft.Peter E.Aaron.
01-11-77	Trial begun with Non-Jury before Gagliardi,J.
01-12-77	" contd.
01-13-77	" "
01-14-77	" " and concluded. Decision reserved.
02-02-77 ✓	Filed Memorandum of Law of Deft.Peter Aaron.
02-04-77 ✓	Filed Pltff's Proposed Findings of Fact and Conclusions of Law.
02-04-77 ✓	Filed " Memorandum in support of Proposed Findings of Fact&Conclusions of Law.
02-09-77 ✓	Filed Deft Peter Aaron Reply Memorandum.
02-10-77 ✓	Filed Pltff's Reply Brief.
04-13-77 ✓	Filed transcript of record of proceedings, dated 01-11-12-13-14 77
04-13-77 ✓	Filed transcript of record of proceedings, dated 01-11-77
04-13-77 ✓	[illegible] dated 01-12-77
04-13-77 ✓	[illegible] 01-13-77
04-13-77 ✓	[illegible] 01-14-77
04-15-77 ✓	Filed Summaries of depositions of Donald Jacobson,Kaplan,Strauss,Cordon,Silberman, Firrinciello&Shapiro submitted by Deft.Peter Aaron.
04-15-77 ✓	Filed Proposed Findings of Fact&Conclusions of law submitted on behalf of deft Peter E.Aaron.
04-15-77 ✓	Filed Deft.Peter E.Aaron Synopsis of principal cases and principal issues
04-15-77 ✓	Filed Principal issues submitted on behalf of Deft.Peter E.Aaron
05-05-77 ✓	Filed OPINION# 45870. SUBMIT JUDGMENT ON 5 Day's Notice. Gagliardi,J. m/n
05-24-77 ✓	Filed Final Judgment of permanent Injunction of Peter E.Aaron,Deft. Ordered that deft Peter E.Aaron,agents,etc, are permanently enjoined from directly or indirectly in absence of any applicable statutory exemption as indicated. Court shall retain jurisdiction of this matter for all purposes.Gagliardi,J.
	JUDGMENT ENTERED.Clk m/n Ent.5/24/77
06-02-77 ✓	Filed Deft.Peter A.Aaron's notice of appeal from final judgment of permanent injunction entered on 5/24/77. (mailed copy to William D.Moran,Atty.26 Federal Plaza,NY10007)

(contd pg.4)

V

76 Civ/907 SEC VS. E.L.AARON & CO.INC. ET AL JUDGE GAGLIARDI 76 Ci

DATE	PROCEEDINGS Pg. 4	Date Judgme
06-03-77	Filed Stip&Order of substitution of attys. for Peter E.Aaron.	
06-08-77	Filed affidavit of service of a certified copy of the final judfment of permanent injunction by Jonathan O. Lee.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- E.L. AARON & CO., INC. LAWN-A-MAT CHEMICAL & EQUIPMENT CORP. EDWARD L. AARON PETER E. AARON NORMAN LAWRENCE SCHREIBER DONALD DARWIN JACOBSON DANIEL DORFMAN FERNANDO ERAZO Defendants.	76 Civil 907 COMPLAINT Judge Gagliardi

---

Plaintiff, Securities and Exchange Commission ("Commission"), for its Complaint herein alleges:

1. Defendants E.L. Aaron & Co. Inc., Edward L. Aaron, Peter E. Aaron and Norman Lawrence Schreiber, have been engaged, are engaged and are about to engage in acts and practices which constitute and will constitute, violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77e(a) and 77e(c); and defendants E.L. Aaron & Co. Inc., Edward L. Aaron, Peter E. Aaron, Norman Lawrence Schreiber, Donald Darwin Jacobson, Lawn-A-Mat Chemical & Equipment Corp., Daniel Dorfman and Fernando Erazo, have been engaged, are engaged, and are about to engage in acts and practices which constitute, and will constitute, violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b),

and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

2. The Commission, pursuant to authority contained in Sections 10(b) and 23(a) of the Exchange Act, 15 U.S.C. 78j(b) and 78w(a), has promulgated Rule 10b-5, 17 C.F.R. 240.10b-5 thereunder, which is now and at all times herein relevant been in effect.

JURISDICTION AND VENUE

3. The Commission brings this action pursuant to authority conferred by Section 21(b) of the Securities Act, 15 U.S.C. 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. 78u(d) to enjoin said acts and practices.

4. This Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. 78aa.

5. The defendants have been engaged and are engaged in certain acts and practices within the Southern District of New York and elsewhere in connection with, and constituting the violations complained of herein. Such actions were effected by making use of the means and instrumentalities of interstate commerce and of the mails.

THE DEFENDANTS

6. Defendant E.L. Aaron & Co. Inc. ("Aaron & Co."), is a New York corporation with its principal office located at 50 Broad Street, New York, New York 10004. In November 1974, Aaron & Co. opened a branch office at 142 Mineola Avenue, Roslyn Heights,

New York ("Long Island Office"). Aaron & Co. is a broker-dealer registered with the plaintiff Commission since June 5, 1961 pursuant to the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. 78o, and is a member of the National Association of Securities Dealers, Inc.

7. Defendant Lawn-A-Mat Chemical & Equipment Corp. ("LAM"), formerly known as Consolidated Home and Garden Services, Inc., is a New York corporation with its executive offices located at 153 Jefferson Avenue, Mineola, New York. LAM's common stock has been registered with the Commission pursuant to Section 12(g) of the Exchange Act, 15 U.S.C. 78l(g), since March 1967 and is traded in the over-the-counter market. As of December 31, 1974, LAM had issued and outstanding 2,229,232 common shares owned by some 676 shareholders. LAM is engaged in the business of selling franchises and products for lawn care, and provides combines, trailers and tractors to franchisees for the application of lawn care products also supplied by LAM. On January 23, 1976 LAM filed a petition for an arrangement pursuant to Chapter XI of the Bankruptcy Act in the United States District Court for the Eastern District of New York.

8. Defendant Edward L. Aaron ("E. Aaron") is the president and sole shareholder of Aaron & Co. and had been a partner in the firm's predecessor from 1947 to its incorporation in 1961. E. Aaron resides at 3215 Netherland Avenue, Bronx, New York.

9. Defendant Peter E. Aaron ("P. Aaron"), the son of E. Aaron, is assistant to the president and, during the relevant period referred to herein, functioned as office manager of Aaron & Co. He has been associated with Aaron & Co. as a registered

representative since 1967 and resides at 119 State Street, Brooklyn, New York.

10. Defendant Norman Lawrence Schreiber ("Schreiber") was associated with Aaron & Co. as a principal of the firm from October 1974 to September 1975. Schreiber resides at 191 North Elm Street, North Massapequa, New York.

11. Defendant Donald Darwin Jacobson ("Jacobson") was associated with Aaron & Co. as a registered representative in its Long Island Office from December 1974 to September 1975. Jacobson resides at 50 The Birches, Roslyn Estates, New York.

12. Defendant Daniel Dorfman ("Dorfman") was president, chief operating officer and chairman of the board of directors of LAM from its inception in 1961 to September 1974. From September 1974 to March 1975, he was chairman of the board of directors and president. From March 1975 to the present, Dorfman has been chairman of the board of directors and owns or controls over 43% of the common stock of LAM. Dorfman resides at 34 Canterbury Road, Woodbury, New York.

13. Defendant Fernando Erazo ("Erazo") was chief operating officer and a director of LAM from September 1974 until August 1975. During this period, he also, at various times, held the positions of president and executive vice president. Erazo resides at 15 West 84th Street, New York, New York.

COUNT I

VIOLATIONS OF SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT, 15 U.S.C. 77e(a) AND 77e(c)-- OFFER, SALE AND DELIVERY AFTER SALE OF UNREGISTERED SECURITIES OF LAM

14. Plaintiff Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 13.

15. During the period from November 1974 to the date hereof, defendants Aaron & Co., E. Aaron, P. Aaron and Schreiber, singly and in concert, directly and indirectly, have been offering for sale, selling and delivering after sale securities, namely, the common stock of LAM and have been and are causing and inducing the offer, sale and delivery after sale of these securities.

16. Specifically, in or about November 1974 and February 1975, defendant Schreiber solicited the sale of a total of 21,000 shares of LAM common stock owned by the defendant Dorfman and a vice president of LAM.

17. Defendants P. Aaron and Schreiber arranged for these shares to be sold to an intermediary broker-dealer, J.W. Weller & Co., Inc. ("Weller & Co.") who thereafter transferred the shares to the defendant Aaron & Co.

18. In connection with these transactions Weller & Co. acted as a mere conduit and, in fact, the actual purchaser was Aaron & Co. who acquired the shares for its own proprietary account.

19. At or about the time that Aaron & Co. purchased these shares for its own account, Aaron & Co. and Schreiber solicited and arranged for the solicitation of customers' orders to buy the LAM shares sold by defendant Dorfman and the LAM vice president.

20. No registration statement as is required by Section 5 of the Securities Act has been filed with the Commission or is in effect with respect to such offers, sales or deliveries after sale of LAM common stock, as described in paragraph 16.

21. Although the defendants Aaron & Co., P. Aaron and Schreiber purportedly relied on Section 4 of the Securities Act, 15 U.S.C. 77(d), and Rule 144, 17 C.F.R. 230.144 promulgated thereunder, as the basis for not complying with the registration requirements of the Securities Act in connection with the transactions described in paragraphs 16-20 above, no such exemption was available because the transactions failed to comply with the conditions of Rule 144 in, among others, the following respects:

(a) the sales by Aaron & Co. were not made as agent for the sellers, but rather as principal for its own account and were, therefore, not made in "brokers' transactions" as required by Rule 144(f) and defined, for purposes of the Rule, by Rule 144(g);

(b) Aaron & Co. and Schreiber solicited and arranged for the solicitation of orders to buy the securities in anticipation of or in connection with the sales, in contravention of Rule 144(f)(i).

22. Defendant E. Aaron aided and abetted the violative conduct of defendants Aaron & Co., P. Aaron and Schreiber, in that he failed to prevent or terminate the type of activity in which the defendants Aaron & Co., P. Aaron and Schreiber engaged as is described above in paragraphs 15 through 21, at a time when defendant E. Aaron knew or should have known of such activity.

23. By reason of the foregoing, defendants Aaron & Co., E. Aaron, P. Aaron and Schreiber have, singly and in concert, directly and indirectly, violated and aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. 77e(a) and 77e(c).

COUNT II

VIOLATIONS OF SECTION 17(a) OF THE SECURITIES ACT, 15 U.S.C. 77q(a), SECTION 10(b) OF THE EXCHANGE ACT, 15 U.S.C. 78j(b) AND RULE 10b-5 THEREUNDER, 17 C.F.R. 240.10b-5--FRAUD IN CONNECTION WITH THE OFFER, SALE OR PURCHASE OF SECURITIES

24. Plaintiff Commission realleges and incorporates by reference each and every allegation contained in paragraph 1 through 23.

25. Since November 1974, the defendants Aaron & Co., E. Aaron, P. Aaron, Schreiber, Jacobson, LAM, Dorfman and Erazo, directly and indirectly, singly and in concert, and aiding and abetting each other, by use of the means and instruments and instrumentalities of interstate commerce and of the mails, have been and are now, employing devices, schemes and artifices to defraud, making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and engaging in acts, practices and a course of business which had operated, now operates and will operate as a fraud and deceit upon purchasers and prospective purchasers in connection with the purchase, offer to sell and sale of certain securities, namely, the common stock of LAM, in violation of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

26. As part of and in furtherance of the aforesaid conduct, defendants Aaron & Co., E. Aaron, P. Aaron, Schreiber and Jacobson, singly and in concert, would and did:

(a) actively seek out investors and prospective investors and offer for sale and sell to them common shares of LAM; and

(b) obtain money and property from over 100 investors throughout the United States for such shares by the use of false and misleading statements, as if more fully described in paragraphs 27 and 28.

27. As a part of such scheme and artifice to defraud, during the period from November 1974 to September 1975, defendants Jacobson and Schreiber in telephone conversations, letters and otherwise, made to investors and prospective investors in the securities of LAM untrue statements of material facts, including, among other things:

(a) that LAM was building a tractor and a gas saving, economy, anti-pollution, electric automobile;

(b) that LAM was about to acquire certain of its materials suppliers, an upstate New York company whose stock was selling for $3 per share and other companies;

(c) that LAM's sales revenues would be five (5) million dollars this year and twenty-five (25) million dollars in five (5) years;

(d) that the price of LAM common stock would double or triple in price within a year; and

(e) statements of similar purport and object.

28. In connection with such scheme and artifice to defraud, defendants Jacobson and Schreiber further omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, among other things:

(a) that the defendants had no basis to project that LAM's sales revenues would be five (5) million dollars this year and twenty-five (25) million dollars in five years;

(b) that the defendants had no basis to project that the price of LAM common stock would double or triple within a year; and

(c) that LAM was not profitable and was in need of additional capital.

29. Defendants E. Aaron and P. Aaron aided and abetted the violative conduct of defendants Aaron & Co., Schreiber and Jacobson, in that they failed to prevent or terminate the use, by Schreiber and Jacobson, of false and misleading representations, described above in paragraphs 27 and 28, in the offer and sale of LAM common stock to the public at a time when E. Aaron and P. Aaron knew or should have known of such activity.

30. In or about November of 1974 LAM caused a list of its stockholders to be supplied to the defendants Aaron & Co. and Schreiber.

31. In or about January of 1975 LAM supplied a list of its franchisees to the defendants Aaron & Co. and Schreiber.

32. The two lists described above in paragraphs 30 and 31 were supplied to the defendants Aaron & Co. and Schreiber by the defendant LAM in order for the defendant Aaron & Co. to notify such persons that purchases and sales of LAM securities could be effected through the defendant Aaron & Co.

33. Thereafter, the defendant Aaron & Co. became the principal market maker in LAM's common stock.

34. Moreover, the defendants LAM, Dorfman and Erazo provided the defendants Aaron & Co., Jacobson and Schreiber with information concerning the operations and future prospects of LAM.

35. During the period from November of 1974 to September of 1975 the price of LAM's common stock rose from 13¢ per share to 88¢ per share.

36. During this same period from November 1974 to September 1975, defendants LAM, Dorfman and Erazo were repeatedly apprised of the false and misleading representations, described above in paragraphs 27 and 28, being made by defendant Jacobson and Schreiber in connection with the offer and sale of LAM common stock.

37. Nevertheless, despite having actual knowledge of these false and misleading representations, neither LAM, Dorfman nor Erazo notified any regulatory authorities, nor made any disclosure to its shareholders or franchisees whose names LAM supplied to Aaron & Co. correcting or disaffirming the inaccurate information, nor did they take any other effective action to halt or prevent the type of activity in which the defendants Aaron & Co., Jacobson and Schreiber were engaged.

38. There was no valid business purpose which justified the failure of the defendants LAM, Dorfman and Erazo to take action such as that described in paragraph 37 above.

39. By reason of the foregoing, the defendants Aaron & Co., Schreiber and Jacobson, singly and in concert, have violated, are violating and are about to violate and E. Aaron, P. Aaron, LAM, Dorfman and Erazo have aided and abetted, are aiding and abetting and are about to aid and abet violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

WHEREFORE, plaintiff Commission respectfully demands:

I. That this Court issue a preliminary injunction and final judgment of permanent injunction enjoining:

A. Defendants Aaron & Co., E. Aaron, P. Aaron and Schreiber, the officers of Aaron & Co., their agents, servants, employees, attorneys, nominees and those persons in active concert or participation with them, and each of them, from, directly or indirectly, violating or aiding and abetting violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. 77e(a) and 77e(c), by directly or indirectly, in the absence of any applicable statutory exemption:

(1) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, through the use or medium of any prospectus or otherwise, the common stock of LAM, or any other security, unless and until a registration statement has been filed with the Commission as to such securities;

(2) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of any prospectus, or otherwise, the common stock of LAM, or any other security, unless and until a registration statement is in effect with the Commission as to such securities;

(3) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, the common stock of LAM, or any other security, for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities.

B. Defendants Aaron & Co., E. Aaron, P. Aaron, Schreiber, Jacobson, LAM, Dorfman and Erazo, the officers of Aaron & Co. and LAM, their agents, servants, employees, attorneys, nominees, and those persons in active concert or participation with them and each of them, from, directly or indirectly, violating or aiding and abetting violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5 by the use of any means or instruments or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, in connection with the offer, purchase or sale of the common stock of LAM, or any other security:

(1) employing any device, scheme or artifice to defraud;

(2) making any untrue statements of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) engaging in any act, practice or course of business which operates as a fraud or deceit upon any person.

II. That this Court grant plaintiff such other and further relief as the Court may deem appropriate.

Respectfully submitted,

William D. Moran

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SECURITIES AND EXCHANGE COMMISSION
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Of Counsel:
DONALD N. MALAWSKY
JEFFREY H. TUCKER
BARRY J. MANDEL
BARRY B. GLOBERMAN

Dated: New York, New York
February 26, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

E. L. AARON & CO., INC.
LAWN-A-MAT CHEMICAL & EQUIPMENT CORP.
EDWARD L. AARON
PETER E. AARON
NORMAN LAWRENCE SCHREIBER
DONALD DARWIN JACOBSON
DANIEL DORFMAN
FERNANDO ERAZO

Defendants.

76 Civil 907

ANSWER OF
PETER AARON

(Gagliardi)

Defendant, Peter Aaron, by his attorney, Charles J. Hecht, for his Answer herein alleges:

1. Insofar as paragraphs 1 and 5 refer or relate to this defendant, defendant denies each and every allegation in such paragraphs. Insofar as paragraphs 1 and 5 refer to E. L. Aaron & Co. ("Aaron & Co."), Edward L. Aaron, Norman Lawrence Schreiber ("Schreiber"), Donald Darwin Jacobson ("Jacobson"), Lawn-A-Mat Chemical & Equipment Corp. ("Lawn-A-Mat"), Daniel Dorfman ("Dorfman") and Fernando Erazo ("Erazo") defendant has insufficient knowledge or information to form a belief of the allegations referring or relating to the defendants Schreiber, Jacobson, Lawn-A-Mat, Dorfman and Erazo and based on information and belief denies each and every allegation of paragraphs 1 and 5 as they refer or relate to Edward L. Aaron and Aaron & Co.

2. Admits the allegations in paragraphs 2, 3, 4 and 6.

3. Denies sufficient knowledge or information to form a belief as to the allegations in paragraph 7 and affirmatively alleges that based upon information and belief at all times relevant hereto Lawn-A-Mat was a reporting company and that its filings were current with the Securities and Exchange Commission.

4. Defendant admits the allegations in paragraph 8.

5. Defendant admits that he is the son of Edward L. Aaron and during the relevant period referred to herein was employed by Aaron & Co., that he has been associated with Aaron & Co. since 1967 and resides at 119 State Street, Brooklyn, New York. Defendant is unable to respond to the allegation that he "functioned as office manager of Aaron & Co." since he does not know how the plaintiff is utilizing such term.

6. Defendant admits the allegations in paragraph 10 and affirmatively alleges that Schreiber was a registered principal of Aaron & Co. who was responsible for all aspects of the operation of the Long Island Branch Office of Aaron & Co.

7. Defendant admits the allegations in paragraph 11.

8. Defendant has insufficient knowledge or information to form a belief as to the allegations set forth in paragraphs 12 and 13.

9. As to paragraph 14 of the Complaint, the defendant repeats and realleges the responses set forth above.

10. Insofar as the allegations in paragraph 15 refer or relate to this defendant, the defendant denies each and every allegation contained therein. Insofar as the allegations contained in paragraph 15 refer or relate to Schreiber, the defendant has insufficient knowledge or information sufficient to form a belief. Insofar as the allegations in paragraph 15 relate to Aaron & Co. and Edward L. Aaron, based on information and belief this defendant denies such allegations except admits that subsequent to October, 1974 he was aware that Aaron & Co. maintained a market for the Common Stock of Lawn-A-Mat and that in connection with such activities directly or indirectly participated in the sale or delivery of the Common Stock of Lawn-A-Mat.

11. Based upon information and belief the defendant denies the allegations contained in paragraph 16.

12. Insofar as the allegations in paragraph 17 refer or relate to the defendant, this defendant specifically denies such allegations and affirmatively alleges that any "arrangements" with J. W. Weller & Co., Inc. were done pursuant to the advice of counsel to Aaron & Co. Insofar as the allegations in paragraph 17 refer or relate to Schreiber, defendant has insufficient knowedge or information to form a belief.

13. Defendant denies knowledge or information sufficient to form a belief as to the allegations in paragraph 18 and affirmatively alleges that any transactions with J. W. Weller & Co. were done pursuant to the advice of counsel.

14. Insofar as the allegations in paragraph 19 refer or relate to Aaron & Co. based upon information and belief defendant denies such allegations. Insofar as the allegations in paragraph 19 refer or relate to Schreiber, defendant has insufficient knowledge or information to form a belief as to the allegations.

15. As to the allegations in paragraph 20, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges that no registration statement was required by Section 5 of the Securities Act of 1933, as amended, with respect to the 21,000 shares of Common Stock of Lawn-A-Mat referred to in the Complaint.

16. As to the allegations contained in paragraph 21, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges that the 21,000 shares of Common Stock of Lawn-A-Mat referred to in the Complaint were, based

upon information and belief acquired by the record and beneficial owners prior to April 15, 1972. Accordingly, the provisions of Rule 144 (17 C.F.R. 230.144), promulgated under the Securities Act of 1933, as amended (the "Act"), need not be complied with and, in any event, based upon information and belief the alleged acts and transactions of Aaron & Co. were not in violation of said rule. Insofar as the allegations in subparagraph (b) of paragraph 21 relating to Aaron & Co., defendant alleges that based upon information and belief Aaron & Co. did not solicit or arrange for the solicitation of orders to buy the securities for its customers in anticipation of or in connection with the sales in contravention of Rule 144(f)(i). Insofar as the allegations in subparagraph (b) of paragraph 21 refer or relate to Schreiber defendant has insufficient knowledge or information to form a belief.

17. Insofar as the allegations in paragraph 22 refer or relate to this defendant, defendant denies each and every allegation. Insofar as the allegations in paragraph 22 refer or relate to Aaron & Co. and Edward L. Aaron, based upon information and belief, defendant denies each and every allegation. Insofar as the allegations in paragraph 22 refer or relate to Schreiber, defendant has insufficient knowledge or information to form a belief.

18. Defendant denies each and every allegation in paragraph 23.

19. As to paragraph 24, defendant repeats and realleges as if set forth in full herein his responses contained in paragraphs 1 through 18, inclusive.

20. Insofar as the allegations in paragraph 25 refer or relate to this defendant, defendant denies each and every allegation. Insofar as the allegations contained in paragraph 25 refer or relate to Aaron & Co. and Edward L. Aaron, based upon information and belief, defendant denies each and every allegation. Insofar as the allegations in paragraph 25 refer or relate to the defendants, Schreiber, Jacobson, Lawn-A-Mat, Dorfman and Erazo, defendant has insufficient knowledge or information to form a belief.

21. Insofar as the allegations in paragraph 26 refer or relate to this defendant, defendant denies each and every allegation. Insofar as the allegations in paragraph 26 refer or relate to Edward L. Aaron, based upon information and belief, defendant denies each and every allegation. Insofar as the allegations in paragraph 26 refer or relate to Aaron & Co., based upon information and belief, defendant denies such allegations except he admits that subsequent to October, 1974, Aaron & Co. maintained a market for the Common

Stock of Lawn-A-Mat and did participate in the purchase and sale of the Common Stock of Lawn-A-Mat. Insofar as the allegations in paragraph 26 refer or relate to Schreiber and Jacobson, defendant has insufficient knowledge or information to form a belief.

22. As to the allegations contained in paragraph 27, the defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges as follows:

(a) that based upon information and belief Lawn-A-Mat and/or persons affiliated with it had furnished information to Aaron & Co. that it was entering into the following new lines of business: (i) the manufacture and distribution of a new type of tractor and (ii) the manufacture and distribution of a new automobile and that a company affiliated with Lawn-A-Mat had entered into a "Letter of Intent" with Aaron & Co. for the latter to act as its underwriter in connection with a proposed offering of additional securities, the net proceeds of which would primarily be utilized for the financing of these proposed additional lines of business.

(b) defendant denies knowledge or information sufficient to form a belief as to subparagraphs (b), (c), (d) and (e) and affirmatively alleges that if such representations were made by Schreiber and Jacobson they were made without the knowledge or consent of defendant, Edward L. Aaron and Aaron & Co. and that such alleged representations were in contravention of Aaron & Co's. internal complaince manual.

23. As to the allegations contained in paragraph 23, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges that at all times material herein he was unaware of the alleged false and misleading representations as described in subparagraph (b) through (e) of paragraph 27 of the Complaint and that any such alleged misrepresentations by Schreiber and Jacobson were in contravention of the internal complaince manual of Aaron & Co.

24. As to the allegations contained in paragraph 24, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant specifically denies such allegations and

affirmatively alleges that upon being advised by Milton Kean, counsel to Lawn-A-Mat, of possible improprieties by the Long Island office of Aaron & Co., defendant immediately informed an officer of Aaron & Co. of Mr. Kean's concern and pursuant to the instructions of an officer of Aaron & Co. immediately notified the registered principal of the Long Island office to cease all solicitations of the Common Stock of Lawn-A-Mat and was advised by such registered principal that these instructions would be followed.

25. Based upon information and belief defendant denies the allegations set forth in paragraph 30 insofar as they relate to Aaron & Co. and affirmatively alleges that if such stockholders list was caused to be furnished by Lawn-A-Mat, it was furnished to Schreiber and/or Jacobson.

26. Based upon information and belief defendant denies the allegations contained in paragraph 31 insofar as they relate to Aaron & Co. and affirmatively alleges that if such list of franchisees was furnished by Lawn-A-Mat, it was furnished to Schreiber and/or Jacobson.

27. As to the allegations contained in paragraph 32, defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges, based upon information and belief,

subsequent to October, 1974, Aaron & Co. maintained a market for the Common Stock of Lawn-A-Mat.

28. Defendant has insufficient knowledge or information to form a belief as to the allegations contained in paragraph 33 except that based upon information and belief Aaron & Co. maintained a market for the Common Stock of Lawn-A-Mat subsequent to October, 1974.

29. Based upon information and belief defendant admits the allegations in paragraph 34.

30. Defendant has insufficient knowledge or information to form a belief as to the allegations in paragraphs 35 and 36.

31. As to the allegations contained in paragraph 37 defendant alleges that they are argumentative and are conclusions of law and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, defendant alleges as follows:

(a) denies knowledge or information sufficient to form a belief as to such allegations insofar as they relate to Lawn-A-Mat, Dorfman and Erazo.

(b) that based upon information and belief the names of shareholders or franchisees of Lawn-A-Mat were only furnished to Schreiber and/or Jacobson.

(c) insofar as such allegations relate to Aaron & Co., Jacobson and Schreiber, defendant has insufficient knowledge or information to form a belief.

32. As to the allegations contained in paragraph 38, defendant alleges that they are argumentative, are conclusions of law and are not applicable to this defendant and, accordingly, do not require a response; but, insofar as they may be deemed to be material allegations of fact, the defendant denies knowledge or information sufficient to form a belief.

33. Insofar as paragraph 39 refers or relates to this defendant, defendant denies each and every allegation in such paragraph. Insofar as the allegations in paragraph 39 refer or relate to Edward L. Aaron and Aaron & Co., based upon information and belief, defendant denies each and every allegation. Insofar as paragraph 39 refers to Schreiber, Jacobson, Lawn-A-Mat, Dorfman and Erazo, defendant has insufficient knowledge or information to for a belief as to the allegations set forth in paragraph 39.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

34. Based upon information and belief the 21,000 shares of Common Stock of Lawn-A-Mat referred to in the Complaint were purchased by the record and beneficial owners

(Dorfman and a Vice-President of Lawn-A-Mat) prior to April 15, 1972 and as at November 1974 such persons had been the record and beneficial owners of such securities for more than three years.

35. Under the rules and regulations promulgated under the Act, as well as the interpretive releases then in effect, such persons would not be deemed to be underwriters as that term is defined by Section 2(11) of the Act and thus, compliance with the provisions of Rule 144 are elective and not mandatory.

36. Even if Rule 144 is deemed exclusively applicable to the alleged acts and transactions relating to the sale of 21,000 shares of Common Stock of Lawn-A-Mat the term "brokers' transactions", as used in Rule 144(f), is defined and explained in 144(g)(2) and that based upon information and belief the acts and transactions of Aaron & Co. came within the exclusions set forth in Rule 144(g)(2).

37. Defendant also alleges that it was common practice in the brokerage industry with respect to substantial blocks of low-priced stocks that for the benefit of the record owners of such stocks arrangements were made with brokerage houses located outside of the State of New York to purchase such shares so that the record owner would not be liable for substantial New York State Transfer taxes on said transactions

and, as such, such arrangements have never been deemed a violation of any provision of the federal securities laws.

38. By reason of the foregoing there are no violations of Section 5(a) and 5(c) of the Securities Act of 1933, as amended.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

39. Defendant alleges that at all times relevant hereto he was not an officer, director, stockholder or registered principal of Aaron & Co. and, thus, would not be deemed a controlling person as such term is defined by Section 20 of the Securities Exchange Act of 1934, as amended.

40. Defendant alleges that he did not directly or indirectly induce the alleged act or acts constituting the alleged violations as set forth in the causes of action alleged in the Complaint.

41. By reason of the foregoing the defendant did not violate or aid and abet violations of Section 17(a) of the Securities Act of 1933, as amended, and Section 10(b) of the Exchange Act and 10b-5 promulgated thereunder.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

42. Defendant alleges that at all times relevant herein Schreiber was the registered principal who was responsible

for supervising himself and all other registered representatives employed at the Long Island Branch Office of Aaron & Co. To the extent there are any violations of the various provisions of the federal securities laws relating to the operations of that office they were the primary responsibility of Schreiber.

44. That if in fact Schreiber and Jacobson committed the acts and transactions alleged in the Complaint, such acts and transactions were not within the scope or authority of their employment.

45. That at all times relevant hereto this defendant did not directly or indirectly supervise the conduct of the registered representatives of Aaron & Co.

46. By reason of the foregoing the defendant did not aid and abet the other defendants to the extent it is found that the other defendants violated Section 17(a) of the Act, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

WHEREFORE, the defendant, Peter E. Aaron, respectfully demands that this Court deny in all respects the plaintiff's demand for a preliminary injunction and final judgment of permanent injunction and such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,

Dated: New York, New York

June , 1976

Charles J. Hecht
Attorney for Peter E. Aaron
Suite 1760, 60 E. 42nd St.
New York, N.Y. 10017
(212) 490-3232

CERTIFICATE OF SERVICE

I hereby certify that I am an attorney at law admitted to practice in the State of New York, and that on the 25th day of June, 1976, I caused to be served by United States mail postage prepaid, one copy of the attached Answer upon William D. Moran, Regional Administrator, New York Regional Office, Securities and Exchange Commission, 26 Federal Plaza, New York, New York 10007.

A review of the files of this case at the United States District Courthouse for the Southern District of New York at Foley Square on June 25, 1976 indicates that all of the other defendants herein, exclusive of Lawn-A-Mat Chemical & Equipment Corp. have consented to the issuance of injunctions and as to that defendant I have been advised by Jeffrey Zivyak of Berman & Zivyak that their client has agreed in principle to an injunction and they are awaiting approval of Judge Ruden before filing the same with this Court and that in connection therewith they do not desire a copy of the Answer of Peter Aaron. Accordingly, copies of the Answer were not served on counsel to the other defendants herein.

Respectfully submitted,

Dated: New York, New York

June 25, 1976

Charles J. Hecht

Charles J. Hecht
Attorney for Peter E. Aaron
Suite 1760
60 East 42nd Street
New York, N.Y. 10017
(212) 490-3232

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff,	76 Civil 907 (LPG)
-against-	NOTICE OF MOTION
E.L. AARON & CO., INC. LAWN-A-MAT CHEMICAL & EQUIPMENT CORP. EDWARD L. AARON PETER E. AARON NORMAN LAWRENCE SCHREIBER DONALD DARWIN JACOBSON DANIEL DORFMAN FERNANDO ERAZO Defendants.	

SIRS:

PLEASE TAKE NOTICE that upon the Summons, Complaint, Affidavit of Barry B. Globerman, and all other papers and exhibits in support thereof, the undersigned will move this Court before the Honorable Lee P. Gagliardi in Courtroom 301 of the United States District Courthouse, Foley Square, New York, New York 10007, on March 16, 1975 at 4 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, for an Order of Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining:

(a) defendants E.L. Aaron & Co., Inc., Edward L. Aaron, Peter E. Aaron and Norman Lawrence Schreiber from further violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77e(a) and 77e(c);

(b) defendants E.L. Aaron & Co., Inc., Edward L. Aaron, Peter E. Aaron, Norman Lawrence Schreiber, Donald Darwin

Jacobson, Lawn-A-Mat Chemical & Equipment Corp., Daniel Dorfman and Fernando Erazo from further violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5; and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to General Rule 9(c)(2) of this Court, you are required to serve upon the undersigned all opposing affidavits and answering memorandum at least three (3) days before the return day.

Dated: New York, New York
February 26, 1976

Yours, etc.
William D. Moran
WILLIAM D. MORAN by [illegible]
Regional Administrator
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
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Telephone No.: 212-264-1636

To: Bert L. Gusrae, Esq.
67 Wall Street
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Attorney for defendants E.L. Aaron & Co., Inc., Edward L. Aaron, Peter E. Aaron, Norman Lawrence Schreiber and Donald Darwin Jacobson

Lawn-A-Mat Chemical & Equipment Corp.
153 Jefferson Avenue
Mineola, New York

Daniel Dorfman
34 Canterbury Road
Woodbury, New York

Fernando Erazo
15 W. 84th Street
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION : 76 Civil

Plaintiff,

-against-

E.L. AARON & CO., INC.
LAWN-A-MAT CHEMICAL & EQUIPMENT CORP.
EDWARD L. AARON
PETER E. AARON
NORMAN LAWRENCE SCHREIBER
DONALD DARWIN JACOBSON
DANIEL DORFMAN
FERNANDO ERAZO

Defendants.

AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

BARRY B. GLOBERMAN, being duly sworn, deposes and says:

1. I am employed by the United States Securities and Exchange Commission ("Commission") as an attorney in the Commission's New York Regional Office ("NYRO"). I submit this affidavit in support of the Commission's motion for a preliminary injunction seeking to enjoin:

(a) defendants E.L. Aaron & Co., Inc., Edward L. Aaron, Peter E. Aaron and Norman Lawrence Schreiber from further violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77e(a) and 77e(c); and

(b) defendants E.L. Aaron & Co., Inc., Edward L. Aaron, Peter E. Aaron, Norman Lawrence Schreiber, Donald Darwin Jacobson, Lawn-A-Mat Chemical & Equipment Corp., Daniel Dorfman

and Fernando Erazo from further violations of Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5.

2. I am familiar with the matters alleged in the Commission's Complaint and the facts set forth herein, and have participated in the investigation of this matter. I make this affidavit on information and belief; the source of my information and the grounds for my belief being interviews with witnesses, conversations with other members of the staff of the NYRO, and an examination of documents in the possession of the Commission.

THE DEFENDANTS

3. Defendant E.L. Aaron & Co., Inc. ("Aaron & Co.") is a New York corporation with its principal office located at 50 Broad Street, New York, New York and, since November 1974, has operated a branch office at 142 Mineola Avenue, Roslyn Heights, New York ("Long Island Office"). Aaron & Co. is a broker-dealer registered with the Commission since June 5, 1961 pursuant to the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. 78o, and is a member of the National Association of Securities Dealers, Inc.

4. Defendant Lawn-A-Mat Chemical & Equipment Corp. ("LAM") formerly known as Consolidated Home and Garden Services, Inc., is a New York corporation with its executive offices located at 153 Jefferson Avenue, Mineola, New York. LAM's common stock has been registered with the Commission pursuant to Section 12(g) of the Exchange Act, 15 U.S.C. 78l(g) since March 1967 and is traded in

the over-the-counter market. As of December 31, 1974 LAM had issued and outstanding 2,229,232 common shares owned by some 676 shareholders. LAM is engaged in the business of selling franchises and products for lawn care, and provides combines, trailers and tractors to franchisees for the application of lawn care products which are also supplied by LAM. On January 23, 1976 LAM filed a petition for an arrangement pursuant to Chapter XI of the Bankruptcy Act in the United States District Court for the Eastern District of New York.

5. Defendant Edward L. Aaron ("E. Aaron") is the president and sole shareholder of Aaron & Co. and was a partner in the firm's predecessor from 1947 to its incorporation in 1961. E. Aaron resides at 3215 Netherland Avenue, Bronx, New York.

6. Defendant Peter E. Aaron ("P. Aaron"), the son of E. Aaron, is assistant to the president and has acted as office manager of Aaron & Co. He has been associated with Aaron & Co. as a registered representative since 1967. P. Aaron resides at 119 State Street, Brooklyn, New York.

7. Defendant Norman Lawrence Schreiber ("Schreiber") was associated with Aaron & Co. from October 1974 to September 1975 and had been a principal and director of sales in charge of Aaron & Co.'s Long Island Office since November 1974. Schreiber resides at 191 North Elm Street, North Massapequa, New York.

8. Defendant Donald Darwin Jacobson ("Jacobson") was associated with Aaron & Co. as a registered representative in its Long Island Office from December 1974 to September 1975. Jacobson resides at 50 The Birches, Roslyn Estates, New York.

9. Defendant Daniel Dorfman ("Dorfman") was president, chief operating officer and chairman of the board of directors of LAM from its inception in 1961 to September 1974. From

September 1974 to March 1975 he was chairman of LAM's board of directors and president. From March 1975 to the present, Dorfman has been chairman of the board of directors and owns or controls over 43% of the common stock of LAM. Dorfman resides at 34 Canterbury Road, Woodbury, New York.

10. Defendant Fernando Erazo ("Erazo") was chief operating officer and a director of LAM from September 1974 until August 1975. During this period he also, at various times, held the positions of president and executive vice president. Erazo resides at 15 W. 84th Street, New York, New York.

SALES OF UNREGISTERED SECURITIES

(SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT, 15 U.S.C. 77e(a) AND 77e(c))

11. In November of 1974, Schreiber and P. Aaron arranged for Dorfman to sell 1,000 shares of unregistered LAM common stock. Counsel for LAM, having been informed that the transaction was to be handled by Aaron & Co., forwarded the stock certificate representing the shares (NU 13) to Schreiber at Aaron & Co.

12. In addition to the stock certificate for 1,000 shares of LAM stock, Counsel for LAM also forwarded to Schreiber a completed Form 144 1/ since the transaction was purportedly to be exempt from the registration requirements of the federal securities laws.

1/ Adopted under Rule 144, 17 C.F.R. 230.144, Form 144 must be completed when unregistered or restricted shares are sold or "freed up" in accordance with the rule.

13. Thereafter, Aaron & Co. caused the certificate and Form 144 to be forwarded to J.W. Weller & Co., Inc. ("Weller & Co."), a New Jersey broker-dealer. In this regard, Weller & Co. purportedly purchased the 1,000 shares from Dorfman at 27¢ per share, less a commission of $20, and then sold the shares to Aaron & Co. at the same price of 27¢ per share.

14. The purpose for causing Weller & Co. to act as a conduit between Dorfman and Aaron & Co. was to create the appearance that the sale by Dorfman was made in compliance with Rule 144. Specifically, if Aaron & Co. purchased the shares from Dorfman, the firm could not purchase the shares for its own proprietary account nor could it solicit customers to purchase these shares. Accordingly, P. Aaron and Schreiber arranged the purchase of the Dorfman shares in a manner whereby it would not appear that Aaron & Co. was buying directly from Dorfman. Thus, Aaron & Co. was able to solicit the sale to its customers of the shares being sold by Dorfman in apparent compliance with Rule 144 when, in fact, the transaction was not effected in accord with the rule since the actual purchaser of the 1,000 LAM shares from Dorfman was Aaron & Co.

15. In February 1975, P. Aaron and Schreiber similarly arranged for Fred Dorfman, Dorfman's son who was then vice president and a director of LAM, to sell 20,000 shares of unregistered LAM common stock to Aaron & Co. through Weller & Co.

16. Thus, all of the shares sold by Dorfman and F. Dorfman pursuant to Rule 144 were in fact purchased by Aaron & Co. for its proprietary account. Thereafter, these shares were sold to the public.

17. In every transaction wherein Aaron & Co. sold LAM stock, including the Rule 144 transaction detailed in paragraphs 11 to 16, the shares were sold from the firm's proprietary account. Thus, in all these transactions the firm acted as a principal or dealer for its own account, rather than as an agent or broker for a customer.

VIOLATIONS OF THE ANTI-FRAUD PROVISIONS

(SECTION 17(a) OF THE SECURITIES ACT, 15 U.S.C. 77q(a), AND SECTION 10(b) OF THE EXCHANGE ACT, 15 U.S.C. 78j(b), AND RULE 10b-5 THEREUNDER, 17 C.F.R. 240.10b-5

18. In November 1974, LAM supplied Aaron & Co. with a shareholder list. In late January 1975, LAM also supplied Aaron & Co. with a listing of the names and addresses of LAM franchisees. These lists were purportedly requested by and supplied to Aaron & Co. in order for Aaron & Co. to inform LAM shareholders and franchisees of where to buy and/or sell LAM stock.

19. Armed with these lists, Schreiber and Jacobson embarked on a mail and telephone campaign to solicit orders for the purchase of LAM stock. Routinely, Schreiber and Jacobson mailed, on Aaron & Co. stationery, form letters to LAM shareholders which stated, "Please contact me immediately with reference to LAM. I would like to bring you up to date on the financials of this company. Call collect." When no response to the letter was received, Schreiber or Jacobson then telephoned the individual.

20. During the period from November 1974 through September 1975, Aaron & Co., through its registered representatives Schreiber and Jacobson, offered, sold and delivered after sale some 80,000 shares of LAM common stock, at prices ranging from 13¢ to 88¢ per share to over 100 persons, many of whom had no prior business relationship with Aaron & Co.

21. This selling campaign conducted by Schreiber and Jacobson was so intensive that shareholders and franchisees of LAM contacted LAM's officers and employees with complaints and inquiries regarding the representations. As a result of these complaints and inquiries, Erazo, chief operating officer of LAM, and Milton Kean ("Kean"), counsel for LAM, contacted Schreiber and Jacobson orally and in writing with requests to halt mak[illegible]rtain misleading and false statements in connection with th[illegible]icitations. These requests are more fully detailed in paragraphs 23, 24, 28, 29, 30, 31, 35 and 38 and in the Chronological Summary of Events attached hereto as Exhibit A.

22. In late 1974 and early 1975, Schreiber and Jacobson, to induce individuals to purchase LAM stock, told prospective investors that LAM was doing well; under new management; about to merge with another company; that the stock was available for sale at a price below the prevailing market price; and was worth two times the selling price. In actuality, LAM was doing poorly, in need of additional capital; and no mergers or acquisitions were pending.

23. Upon learning of these representations Erazo called Schreiber and Jacobson requesting that they discontinue making these representations. Erazo called Kean and told him about the representations being made by Schreiber and Jacobson.

24. On January 14, 1975, Kean contacted Schreiber and told him that the representations he and Jacobson were disseminating were untrue and to cease soliciting LAM shareholders and franchisees in this manner. Indeed, at this time, Kean told Schreiber

that unless the representations ceased, "there will be hell to pay." Kean, in this same vein, again called Schreiber on January 24 and 27, 1975 and February 3, 1975 and made a similar call to Jacobson on January 29, 1975.

25. On January 28, 1975, despite learning of the misrepresentations made to prospective investors by Schreiber and Jacobson, Erazo sent the listing of the names and addresses of LAM franchisees, more fully described in paragraph 18 above, to Schreiber.

26. In February 1975 Dorfman was advised by Erazo's executive assistant of complaints and inquiries concerning representations being made by Schreiber and Jacobson.

27. In late January, February and March 1975, Schreiber and Jacobson continued to solicit purchase orders for LAM stock from LAM shareholders and franchisees. In connection with these solicitations, LAM shareholders and franchisees were told that LAM was building a gas saving, anti-pollution, economy, electric automobile which would be introduced in April 1975; that LAM was building a tractor; that the price of LAM stock would triple in price; and that it was a "ground floor" opportunity. In actuality, LAM was not building any type of auto or tractor; there was no basis to project that the stock price would triple; and LAM was still in financial straits and in need of capital.

28. In connection with the representations set forth in paragraph 27, Erazo again called Schreiber and/or Jacobson and,

on February 11, 1975, sent a letter to Schreiber, a copy of which is attached hereto as Exhibit B, insisting that any information to be disseminated to LAM dealers about LAM should be first cleared with him. Copies of this letter were forwarded to Dorfman and Kean.

29. In March, Kean again called Schreiber and/or Jacobson requesting they stop making these representations.

30. On April 8, 1975, at a meeting in Kean's office, Dorfman, Kean and Erazo informed Jacobson that LAM was not involved in the production of any type of automobile.

31. On April 14, 1975, Kean called P. Aaron and told him to put a stop to the misrepresentations being made by Schreiber and Jacobson. Kean informed P. Aaron that if Schreiber and Jacobson could not be controlled, LAM would have to take appropriate action, including the possibility of notifying the plaintiff Commission. P. Aaron responded that his firm would terminate their sales efforts in LAM stock.

32. Nevertheless, despite this threat and continued misrepresentations by Schreiber and Jacobson neither LAM, Dorfman nor Erazo ever notified any regulatory authorities nor made any disclosure to its shareholders or franchisees whose names LAM supplied to Aaron & Co. correcting or disaffirming the inaccurate information nor did they take any other effective action to halt or prevent the type of activity in which Aaron & Co., Jacobson and Schreiber were engaged.

33. Thereafter, P. Aaron informed E. Aaron of LAM's concern. P. Aaron then notified Jacobson of the call and was informed that Jacobson would speak to Kean about the matter.

34. Subsequently, during April 1975, Schreiber and Jacobson continued to solicit purchase orders for LAM stock. Schreiber

and Jacobson told prospective investors that LAM would "do" $5 million this year (1975) and $25 million in 5 years; that LAM was going to acquire their fertilizer suppliers; that LAM owned a seed company and was going to acquire another company; and that LAM was doing so well that its suppliers were not able to keep up with the company's purchase needs. In actuality, LAM could not and did not "do" $5 million in 1975; Jacobson and Schreiber did not have any basis to project that LAM would "do" $25 million in 5 years; LAM does not own the seed company; LAM did not plan to acquire its suppliers or any other companies; and LAM is experiencing financial difficulties and its suppliers are current.

35. In one instance, on May 1, 1975, Schreiber "touted" LAM stock to LAM's office manager, who told Erazo of the solicitation. That same day, Erazo again telephoned Jacobson and/or Schreiber directing them to stop contacting persons associated with LAM. Erazo also telephoned Kean, who, on May 2, 1975, again spoke to Jacobson requesting that he and Schreiber stop making misrepresentations in connection with the offer and sale of LAM stock.

36. In June 1975, Jacobson asked Erazo if LAM would be interested in merging with or acquiring Servo Systems, Inc. ("Servo"), a Westchester, New York company, active in the lawn care field. In that connection Jacobson sent certain operational

and financial information regarding Servo to LAM. A dispute arose between Erazo and Jacobson in connection with Jacobson's remuneration should the deal be consumated, and Erazo returned the information to Jacobson on June 23, 1975.

37. In late June and July 1975, Schreiber and Jacobson called LAM shareholders and franchisees to solicit purchasers of LAM stock and represented that LAM was negotiating to merge or acquire an upstate company, whose shares were trading at $3 per share (Servo). LAM franchisees continued to purchase shares from Schreiber and Jacobson in June, July and August at a time when any and all negotiations had been unsuccessfully concluded.

38. In connection with the facts set forth in paragraph 37, in July 1975 Erazo called Kean, who again telephoned Jacobson and Schreiber demanding that they stop their activities. Kean then wrote a letter to Jacobson on July 29, 1975, a copy of which is attached hereto as Exhibit C, informing him that LAM had not entered into any material negotiations with any company leading to an acquisition, merger or consolidation and statements to that effect would be inaccurate.

39. As of August 1975, Jacobson and Schreiber continued to solicit purchasers of LAM stock, advising prospective purchasers that LAM was negotiating to merge or acquire a company.

40. LAM, Dorfman and Erazo, throughout the period detailed herein, knew that Jacobson and Schreiber were continually, over an extended period of time, making misrepresentations regarding LAM to investors and prospective investors. Although in possession of this information, LAM, Dorfman and Erazo neglected to inform the LAM shareholders and franchisees whose names they supplied to Aaron & Co. or any regulatory authorities of the false and misleading information being disseminated by Schreiber and Jacobson regarding LAM or take any other steps to effectively curtail the activities of Schreiber and Jacobson.

41. E. Aaron, as president, sole officer and owner of Aaron & Co., has overall supervision and management of the firm's activities. Due to the small size of Aaron & Co., E. Aaron is actively involved in the day to day operations of the firm including the supervision of trading activities, the firm's retail sales efforts and its one branch office.

42. P. Aaron, although not an officer or director of Aaron & Co., exercises a great deal of authority and control at the firm. P. Aaron, the president's son, and assistant to the president, exercises duties similar to those of an office manager rather than a registered representative. He has supervisory responsibilities for the trading functions, back office and retail sales activities at the firm. P. Aaron was also responsible for recruiting the majority of registered representatives at Aaron & Co. and initiated and directed Aaron & Co.'s trading activities with Weller & Co.

43. Accordingly, E. Aaron and P. Aaron knew or should have known of the activities of Schreiber and Jacobson, described in paragraphs 19 to 42.

JURISDICTIONAL MEANS

44. In connection with the above described activities, the defendants have made use of the mails and of the means and instrumentalities of transportation and communication in interstate commerce. Among other things, the defendants have utilized the United States mails to transport LAM stock certificates, letters to investors and prospective investors, purchase and sale confirmations and payments for such purchases and sales. In addition, the defendants have made numerous interstate telephone calls in connection with the offer and sale of said stock.

NEED FOR RELIEF

45. E. Aaron and P. Aaron continue to be associated with Aaron & Co. which is still conducting the business of a broker-dealer in securities.

46. In addition, there is no impediment to the association of Schreiber of Jacobson with any broker-dealer and consequently, no impediment to a return to the same circumstances which led to the conduct from which the Commission seeks relief.

47. Similarly, there is no impediment to Erazo's association with any company whose securities are publicly traded.

48. Finally, LAM remains a publicly held company with Dorfman as its chairman of the board and principal stockholder.

49. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, it is respectfully requested that this Court issue an order preliminarily enjoining (a) Aaron & Co., E. Aaron, P. Aaron and Schreiber from further violations of the registration provisions of the federal securities laws; and (b) Aaron & Co., E. Aaron, P. Aaron, Schreiber, Jacobson, LAM, Dorfman and Erazo from further violations of the anti-fraud provisions of the federal securities laws.

Barry B. Globerman

BARRY B. GLOBERMAN

Sworn to before me this
19th day of February 1976

NOTARY PUBLIC

DOUGLAS P. JACOBS
Notary Public, State of New York
No. 7057670
Qualified in Kings County
Commission Expires March 30, 1976

EXHIBIT A

EXHIBIT A

Chronological Summary of Events

Date	Activity of Jacobson and/or Schreiber	LAM's Response
November 1974	Krantz, with the knowledge of Dorfman and Erazo, supplies Jacobson and Schreiber with a list of LAM shareholders.	
January 2, 1975		Erazo informs LAM franchisees that LAM stock can be purchased and sold through Aaron & Co.
Late 1974 and early 1975	Jacobson and Schreiber mail Aaron & Co. form letters to, and inform prospective investors that, (1) LAM is doing well; (2) LAM is about to merge with another company; and (3) LAM stock is being sold below and is worth twice the market price.	Erazo calls Jacobson and Schreiber requesting that they halt misrepresentations. Erazo calls and informs Kean of the misrepresentations.
January 14, 1975		Kean calls Schreiber and tells him that unless misrepresentations are stopped, there will "be hell to pay."

Date	Activity of Jacobson and/or Schreiber	LAM's Response
January 24, 1975		Kean tells Schreiber that misrepresentations must stop.
January 27, 1975		Kean tells Schreiber that misrepresentations must stop.
January 28, 1975		Erazo sends list of LAM franchisees with addresses and phone numbers to Jacobson and Schreiber.
January 29, 1975		Kean tells Jacobson misrepresentations must stop.
January 31, 1975		Kean tells Schreiber that misrepresentations must stop.
February 3, 1975		Kean tells Schreiber that misrepresentations must stop.
February, 1975		Nina Lane informs Dorfman that complaints have been received indicating that Jacobson and Schreiber have been making misrepresentations about LAM.

Date	Activity of Jacobson and/or Schreiber	LAM's Response
Late January, February and March 1975	Jacobson and Schreiber continue soliciting and informing investors that (1) LAM is building a new economy automobile; (2) LAM is building a tractor; and (3) the price of LAM stock would triple.	Feb. 1975 - Erazo tells Schreiber and Jacobson to stop making misrepresentations. Feb. 11, 1975 - Erazo writes to Schreiber requesting that he terminate misrepresentations. March 1975 - Kean tells Schreiber and Jacobson that misrepresentations must stop.
April 8, 1975		Meeting between Dorfman, Kean, Erazo and Jacobson at Kean's office. Jacobson advised that LAM not involved in the production of automobile.

Date	Activity of Jaoobson and/or Schreiber	LAM's Response
April 14, 1975		Kean tells P. Aaron that, unless he stops Jacobson and Schreiber from making any further misrepresentations, he (Kean) would have to notify the SEC.
April, May 1975	Jacobson and Schreiber continue soliciting and informing investors that (1) LAM would generate $5 million in sales this year; (2) LAM would have $25 million in sales in 5 years; (3) LAM would acquire its fertilizer suppliers; and (4) LAM would acquire a company known as Rainbird and (5) LAM owns a company known as Majestic Seed Co.	May 2, 1975 - Kean tells Jacobson and Schreiber that misrepresentations must stop. May 1975 - Erazo tells Schreiber that misrepresentations must stop.
June, July and August 1975	Jacobson and Schreiber continue soliciting and informing investors that LAM was negotiating to acquire a company whose stock was selling for $3 per share.	July 1975 - Erazo tells Jacobson and Schreiber that there are no negotiations. July 29, 1975 - Kean writes to Jacobson advising that there are no negotiations.

Date	Activity of Jacobson and/or Schreiber	LAM's Response
August 12, 1975		Board of Directors meeting held at LAM. Hamilton Tape of August 6, 1975 played, in which Schreiber informs Hamilton of LAM negotiations with another company. Meeting attended by Dorfman, Erazo and Kean.

EXHIBIT B

AUG 28 1975

COPY

Division
Exhibit Keaty
#3
9-9-75 EC [illegible]

A-54

LAWN-A-MAT

Division 1 (Dorfman)
10/10/75 S

February 11, 1975

Mr. Norman Schreiber
Director of Sales
142 Mineola Avenue
Roslyn Heights, N. Y. 11577

Dear Mr. Schreiber,

I am writing this letter to advise you that several calls from Lawn-A-Mat Dealers have been received, by us, recently, regarding your telephone calls to them.

You may possibly not be aware that our Dealers are quite up-to-date on Lawn-A-Mat's position. That is the reason why they are so concerned about your calls to them regarding automobiles, wholly owned subsidiaries..., etc.

As the Chief Operating Officer of the Lawn-A-Mat Chemical & Equipment Corporation, I am requesting that if you are going to call our Dealers with particular information about Lawn-A-Mat, I would want to know beforehand what that information is going to be.

I consider that certain information is being misunderstood, and is placing the Company in a very embarrassing position, with possible legal implications.

Thank you for your consideration.

Yours very truly,

Fernando Erazo
Executive Vice President

FE/njl
c.c. D. Dorfman
M. Kean

153 JEFFERSON AVENUE
MINEOLA, NEW YORK 11501
LAWN-A-MAT CHEMICAL & EQUIPMENT CORP

EXHIBIT C

MILTON KEAN
COUNSELLOR AT LAW
60 EAST 42 STREET
NEW YORK, NEW YORK 10017

TELEPHONE 867-4616
AREA CODE 212

July 29, 1975

Mr. Donald Jacobsen
E. L. Aaron & Company
142 Mineola Avenue
Roslyn Heights, New York 11577

Re: Lawn-A-Mat Chemical & Equipment Corp.

Dear Mr. Jacobsen:

This will confirm that the above-named corporation has not entered into any material negotiations with any company leading to an acquisition, merger or consolidation, and that any statements to that effect made by your office to any prospective stockholders would be inaccurate.

It is my understanding that you have instructed your office that no deals are pending.

Sincerely,

MILTON KEAN

MK:bw

cc: Fernando Erazo
Nina Lane
Stanley Essner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

E. L. AARON & CO., INC.
LAWN-A-MAT CHEMICAL & EQUIPMENT CORP.
EDWARD I. AARON
PETER [illegible] AARON
[illegible] LAWRENCE SCHREIBER
DONALD DARWIN JACOBSON
DANIEL DORFMAN
FERNANDO ERAZO

Defendants.

76 Civil 907(LPG)

AFFIDAVIT OF PETER AARON IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER AARON, being duly sworn, deposes and says:

1. I am one of the defendants and submit this affidavit in opposition to the plaintiff's motion seeking to enjoin me from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, as amended (the "Securities Act"), and Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 10b-5 promulgated thereunder.

2. Deponent has been advised that all of the other defendants, exclusive of Lawn-A-Mat Chemical & Equipment Corp. ("LAM"), have consented to the entry of injunctions on consent

without admitting the substantive allegations in the Complaint and that LAM has consented to a similar injunction and is in the process of clearing that judgment with the Bankruptcy Court. Accordingly, this affidavit is limited to those allegations in the Complaint and those contentions in the Affidavit of Barry B. Globerman, Esq., and exhibits thereto which directly or indirectly relate to deponent.

3. Deponent was not a corporate officer, director or shareholder of E. L. Aaron & Co., Inc. (hereinafter referred to as the "Company").

4. Deponent was the record and beneficial owner of a $50,000 subordinated debenture in the Company which was bequeathed to deponent by his mother in her will.

5. In paragraph 9 of the Complaint the plaintiff has alleged that deponent was the "assistant to the president and, during the relevant period referred to herein, functioned as office manager of Aaron & Co." In paragraph 42 of Mr. Globerman's affidavit, the plaintiff concedes that deponent was not an officer or director and paraphrases paragraph 9 of the Complaint. In addition, Mr. Globerman contends that deponent had supervisory responsibility for the trading functions, the back office, retail sales, recruited the majority of the registered representatives and initiated and directed the Company's trading activities with Weller & Co.

6. An analysis of my duties as "office manager" and basis of compensation, as hereinafter described, clearly show that deponent is not and never was a "control person", as that term is defined by Section 20 of the Exchange Act.

(a) As an employee of the Company, deponent was designated a Trader and Syndication Manager of the firm.

(b) Except for two or three general retail accounts as to which no commissions were paid to deponent, deponent was not directly involved with any aspect of the retail end of the Company's business, did not deal with any other retail customers, or was I responsible for supervising the conduct of the registered representatives of the firm.

(c) Prior to July, 1975 deponent's basis of compensation was a salary of $200 per week and thereafter, until October, 1975, when deponent severed his relationship with the Company, my salary was $300 per week. In addition, deponent was reimbursed for certain disbursements relating to the Company's business and at the end of certain fiscal years deponent was paid a bonus, as determined by my father, which bonus never exceeded $4,000.00. Deponent received no commissions on the retail sale of securities to customers of the Company nor was my compensation in any way related to retail sales of securities.

(d) The administrative duties deponent performed were directly related to protecting the principal value of the debenture which deponent inherited from his mother as set forth below:

(i) obtained and maintained a due diligence file on each security in which the Company made a market in the over-the-counter market;

(ii) acted as liason between the back office (commonly called the "cage") and the operating personnel and as part of such duties was responsible for insuring that the trading positions of the firm were in proportion with the individual registered representatives capabilities. This was required to prevent the Company from being caught with a substantial inventory in a particular security which possible could not be readily liquidated and, thus, potentially impair the net capital of the firm.

(iii) as syndication manager I was responsible for coordination with the investment banking and/or syndication departments of other broker-dealers and the internal operation of the investment banking operations of the Company. The latter included the screening, analysis, review and recommendations relating to prospective public offerings, private offerings and mergers and acquisitions of other companies in which the firm was involved but at no time did such duties involve direct dealings with actual or potential retail customers of the Company except as required to effectuate certain private placements which the firm participated.

(iv) prior to March, 1974 deponent did some of the firm's trading, under the supervision of my father, but subsequent to that time deponent was required to devote full time to his administrative duties;

(v) at the request of my father deponent assisted in the screening and interviewing of potential registered representatives but all decisions as to the hiring, firing and supervision of such registered representatives were made by the officers, directors or registered principals of the Company; and

(vi) I had authority to stop payment on commission checks to registered representatives where customers had failed to pay or deliver securities.

7. Accordingly, neither in fact nor in law could deponent be deemed a "control person" of the Company who is responsible for the acts and transactions of a registered principal and employee of a branch office of the Company which were done without deponent's knowledge or consent. The types of duties performed by deponent would not even require registration as a registered principal much less a control person.

8. When the foregoing is viewed in light of the plaintiff's two causes of action it becomes self-evident that plaintiff is not entitled to the relief requested.

9. As to the cause of action relating to alleged violations of the anti-fraud provisions of the federal securities laws the Complaint contains a bare allegation in paragraph 29 that deponent aided and abetted Schrieber and Jacobson, respectively the registered principal and a salesman of the Company's Mineola Branch Office in that he failed to prevent or terminate this alleged use of false and misleading statements.

10. The only support for this conclusory allegation is contained in paragraphs 31 and 33 of Mr. Globerman's affidavit based on testimony or statements from one Milton Kean that deponent was advised of such alleged false and misleading representations by him on April 14, 1975, that deponent advised him that these individuals would terminate any improper solicitation of LAM Common Stock, that deponent advised the president of the Company and Jacobson of this call and was informed that Jacobson would straighten out this situation with Kean. This is apparently the same Mr. Kean who was forced to resign from practice or appearing before the Commission for participating in the preparation of false and misleading proxy statements and S.E.C. reports. S.E.C. v. Lawrence Hurwitz et al U.S. D.C. D.C. 76-1072, S.E.C. Litigation Release 7451 June 17, 1976.

11. Thus, the plaintiff concedes that prior to April 14, 1975 deponent was totally unaware of any wrongdoing on the part of Schrieber or Jacobson and their various communications with the management and counsel to LAM. Furthermore, deponent believes that Edward L Aaron,

my father, was totally unaware of any wrongdoing by this branch office. Even if the Court should give any credence to the testimony of Milton Kean, LAM's counsel, it is still self-evident that deponent did not induce or benefit by this alleged wrongful conduct by Schrieber, the registered principal in charge of this branch office, and Jacobson, a registered representative who was under the direct daily supervision of Schrieber. The facts alleged by plaintiff, even if proved at the hearing, only prove that deponent did everything within his power to remedy any potential wrongdoings on the part of Schrieber and Jacobson.

12. Deponent believes that the other individual defendants, exclusive of Edward Aaron, did everything in their power to conceal the true nature of their acts and transactions with respect to the Common Stock of LAM.

13. The reason for this is self-evident. The Registered Representative's manual must be read and signed at the beginning of his employment by each retail salesperson and he maintains possession of this manual throughout his employment by the Company. This manual specifically prohibits the type of acts and practices alleged in the Complaint. Attached hereto as Exhibit "A" are pages 10 through 14 of this manual. It is my belief that the Company enforced the provisions of this manual, but if a particular registered representative elects to conspire with the management of a company for their own selfish reasons there is no manual or enforcement policy yet in creation which will prevent such conduct.

14. Were it not for the fact that my father is 68 years old and had already devoted over 50 years of his life to the brokerage industry, of which the last 25 were with the Company, both he and

E.L. Aaron & Co. would be contesting the relief requested by the plaintiff. Instead my father is a broken man and has closed down E.L. Aaron & Co., Inc., which was one of the few remaining brokerage firms devoted exclusively to over-the-counter stocks.

15. Were it not for the fact that deponent is the son of Edward L. Aaron, who one day would inherit E.L. Aaron & Co., deponent would not have been named in the Complaint. Exclusive of the one statement of one Milton Kean, who obviously has certain selfish considerations and motivations, there is not one bit of factual support that deponent was in any way directly or indirectly involved or aided and abetted Messers. Schrieber and Jacobson along with the management of LAM in their alleged fraudulent scheme to promote the common stock of LAM. Deponent did nothing to further the alleged fraudulent course of conduct or receive any benefit therefrom.

16. As to the first cause of action which relates to alleged violations of Section 5 of the Securities Act because of the alleged non-compliance with Rule 144 of the rules and regulation promulgated thereunder, deponent believes that this is primarily a question of law, but that there are certain relevant facts which should be brought to the attention of the Court.

17. My ~~course~~ counsel has advised me that in all likelihood the 21,000 shares of LAM Common Stock referred to in the Complaint were purchased by the Dorfman's in 1964, prior to the first public offering of LAM.

18. That at all times relevant herein LAM was a reporting company under the Exchange Act and that the Company's due diligence file on LAM was current.

19. That counsel to the Company, Dan Brecher, had previously advised the Company on the propriety of the various legal aspects of the format utilized herein and that the Company followed such counsel's advice.

20. That in connection therewith the Company inquired as to the length of time that the Dorfman's owned these securities, the number of shares of LAM Common Stock outstanding, the relevant trading volume, the current status of its reports filed with the S.E.C., that the Dorfman' had made no other arrangements to sell their stock and that the Company would only receive a normal brokerage commission.

21. That Rule 144 only applied on a prospective basis to securities acquired after April 15, 1972 and, accordingly, there were other exemptions available, to wit Section 4 of the Act and Rule 237 promulgated therunder.

22. That this transaction complied with both the spirit and the letter of Rule 144 (f) and (g) in that they were clearly "brokers transactions" and that the purpose of that requirement was to prevent the owners of the securities from enganing in the direct sale of that security.

23. That the unique theory advocated by the plaintiff is contrary to the actual operation of the over-the-counter market and common sense since it would mean that at the time of sale of any over-the-counter security pursuant to Rule 144 there must magically appear the same exact number of offers to purchase on the books of the broker. In fact to consumate the sale of a significant block of an over-the-counter security the broker-dealer is required to take such stock in inventory and bears the risk of retailing out those securities.

24. That there was a valid business purpose in utilizing Weller and Co. as an intermediary; to wit the minimization of the New York State stock transfer tax which was especially onerous with respect to low-priced securities.

25. That the request of the S.E.C. the Company requested the New York State Department of Taxation and Finance to conduct an audit of its books and records with respect to this procedure and that audit approved of this method of transacting sales through a New Jersey intermediary.

26. The use of such an intermediary reduced the tax burden of the seller of the securities and did not result in and benefits to the Company.

27. In October, 1975 deponent severed his relationship with the Company and since that time has been engaged as a consultant to firms not engaged in the securities industry.

28. The consequences of even a preliminary injunction on deponent are potentially very great; (i) deponent could be held in contempt in the future if any employee of any brokerage house with whom I may ever become associated with in any capacity regardless of the adequecy of supervision; (ii) it could be the predicate of a disciplinary proceeding against deponent under Section 15 (v)(5)(C) of the Exchange Act even though deponent is not a registered principal or control person of the firm nor did he participate, induce or aid and abet in the alleged wrongful course of conduct; (iii) it would disqualify any firm which may employ me in the future from acting as an underwriter; (iv) it would disqualify deponent from employment

by a registered investment company and (v) it could disqualify deponent as an officer, employee or stockholder of a company registered with the Commodity Futures Trading Commission.

29. As a result of the mere filing of this Complaint deponent has already been severely penalized. In February, 1976 deponent was offered the opportunity to become an officer and 50% shareholder in a commodity house which at that time had a net worth of approximately $68,000. However, counsel to that Company, who is also my counsel herein, advised me that in view of this pending proceeding by the S.E.C. deponent could not accept this offer until deponent prevailed in this litigation, as under Secion 4(n)7 of Section 8(b) of the Commodity Exchange Act an injunction relating to violation of the anti-fraud provisions could be the basis for denial or revocation of that company's registration before that agency. Since that date the net worth of that commodities firm has increased to approximately $1,000,000 and, thus, a 50% interest, which is now out of my financial capability, can no longer be purchased even if I should prevail in this litigation.

30. Since I started working for the Company at 16 I looked forward to the day when I would own E.L. Aaron & Co. and carry on the family tradition. Now that dream is no longer possible. Even if I should ultimately prevail in this litigation it will be almost impossible for me to get a job with another broker-dealer. The stigma of being named in an S.E.C. action will be with me the rest of my life.

31. Although I have been engaged in the brokerage business since I have been 16 years old there are no prior disciplinary proceedings by either the S.E.C. of the N.A.S.D. against deponent.

WHEREFORE, deponent respectfully requests that the relief requested by plaintiff be denied in all respects with costs and disbursements.

/s/
Peter Aaron

Sworn to before me
this 2[illegible]th day of
July, 1976

/ /
Notary Public

KATHRYN LANE
NOTARY PUBLIC, State of New York
No. 41-7418925
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1966 78

CONDUCT OF ACCOUNTS

REGISTERED REPRESENTATIVE'S RESPONSIBILITY TO THE CUSTOMER AND TO THE FIRM

Unlike salesmen in many other fields, the Registered Representative's primary responsibility is not to offer his product indiscriminately, but to be aware of and look out for the best interest of his client. Before making a recommendation, he must determine his customer's investment needs and financial capabilities, and assure himself that any recommendations are consistent with the objectives and resources of the client. The customer's needs may not necessarily by synonymous with his wants, and it is the Registered Representative's responsibility to point out any dangers and pitfalls. In addition, the Registered Representative should use the full facilities available to him in extending the utmost of service to all of his accounts. He owes it to his customers to keep fully abreast of all developments in the financial world in general, and in particular the many corporations about which he may be called upon for information. The Registered Representative must also keep himself aware of all the rules and regulations which govern his business and any changes as they occur, and generally must do all in his power to run his affairs in an efficient, courteous and effective manner.

With regard to the Firm, the Registered Representative should conduct himself at all times, in a manner calculated to maintain the reputation and good name of E. L. Aaron & Co., Inc. He is, of course, expected to adhere to all the regulations and practices laid down by the various bodies to govern his conduct, and to pursue the policies of the Firm at all times.

ADVISING CLIENTS

The true value of a stock is determined by its earning power, dividend-paying ability and in many cases by its assets. It also must take into account a reasonable estimate as to how much, on average, profits and dividends are likely to grow in the future. The intrinsic worth of most well-managed, successful companies does not usually change rapidly. Even though earnings may decline temporarily in some periods and rise faster than normal in others, value tends to increase gradually and fairly steadily -- in reflection of the underlying progress of the business.

The successful management of capital, however, also requires an understanding of the nature and causes of periodic shifts in investor psychology. Investors are as subject to emotional influences as any other group. They tend to get overly optimistic at certain times and unduly pessimistic at others -- especially when most people they talk to and most articles they read express similar feelings. In the stock market, good news about a company or general business generates enthusiasm and prices rise. Bad news does the opposite. Of course, new conditions do affect values at times, and prices shoudl react accordingly. But more often than not, the developments are temporary and have no bearing on the real worth of stocks.

Sensible individual and institutional investors are not influenced by excessive swings in their emotions. They follow the logical pattern of buying high-grade securities and holding them as long-term investments. On the other hand, there are countless others who think they are investors, but in fact are merely traders. They consider stocks as no more than pieces of paper represented by numbers in each day's market quotations. Their idea is to buy at a low number and sell out at a higher one. Usually they know little about the companies themselves, but are only interested in some "hot" news that will make their stocks go up.

Most of our clients would be well-advised to purchase growth stocks to be held on a semi-permanent basis. The retention and plow-back of a large part of earnings at a high profit margin is the basic reason why growth stocks grow. Growth stocks provide (1) the most certain prospects of capital appreciation over a terms of years, (2) the lowest yield at the time of purchase and (3) the highest yield at cost over the long run. Most investors are unaware of the high yield that growth stocks are likely to provide over a period of time. Paradoxically, this characteristic is the result of their low yield at the time of purchase. A typical growth company pays out a relatively small portion of its earnings in cash dividends and retains the balance of its profits to help finance additional research, development of new products, expansion of plant and distribution facilities. If the company financed its expansion externally be selling additional securities rather than internally through retained and reinvested earnings, the per share growth would be diluted. Eventually, the retained earnings which are reinvested in research, new products and additional plant produce added earning power and dividend paying ability. As time goes on, dividends are stepped up and the yield at cost increases. For the investor who does - or could - reinvest rather than spend most or all of his dividends, after he pays income tax on them, this indirect method of forced saving and reinvestment is extremely beneficial. Because of this "internal" method of financing, a diversified list of growth stocks is virtually certain to record greater capital appreciation and greater income over the years than a list of income stocks or a list of cyclical stocks.

With this in mind, it is important that a Registered Representative educate his clientele as to the merits of diversification; the value in dollar cost averaging, and the benefits of acquiring growth stocks on a regular basis. At the same time, it is the responsibility of a Registered Representative to discourage, and advise his customers of the dangers of purchasing securities on rumors; trading in companies which have a small amount of securities issued and outstanding; and trading in low-priced, speculative and abscure issues.

At all costs, a Registered Representative must not "tout" securities. The Securities and Exchange Commission considers it a violation of the anti-fraud provisions of the Securities Act of 1933 and the Securities and Exchange Act of 1934 to recommend a security to a customer where there is no adequate or reasonable basis for the recommendation. Any recommendation to a customer, therefore, must be based on sound statistical, analytical data, and not in the transmittal of gossip or rumor. In addition, a Registered Representative, when recommending a security to a client, must inform the customer of all known facts relating to the security, as well as those facts that are reasonably ascertainable. If there is no current reliable information concerning the security, that circumstance must also be disclosed by the Registered Representative to the customer. Moreover, it goes without saying that in recommending securities, no false statements may be made, nor may there be an omission to state a material fact, however bearish, regarding a security.

A Registered Representative must also not disseminate seemingly factual information passed on to him by sources other than the Firm's Research Department or recognized statistical services such as Moody's or Standard and Poor's, as fact. A Registered Representative must be careful to identify opinions, and impress upon his customers that the recommendations of the Firm issued by the Research Department are just that - opinions. At all costs, a Registered Representative must not contribute to the circulation of rumors. If he has any questions, he should check with the Firm's Research Department first.

RELATIONSHIP BETWEEN A REGISTERED REPRESENTATIVE AND HIS CUSTOMER

When a Registered Representative applies for registration with the New York Stock Exchange, he signs an agreement setting forth the major principals of his future business conduct in relation to his customers. These principals are contained in paragraph 31 of New York Stock Exchange Form RE-1 ("Application for Approval of Employment of Registered Representative"); and may be summarized as follows:

A Registered Representative may not:

(1) guarantee a customer's account against loss.

(2) share in the profits or losses reflected in a customer's account.

(3) borrow from, or lend to a customer.

(4) pay anything of value to anyone for recommending business. This includes excessive entertaining, favors, gifts, etc.

(5) receive anything of value from anyone but the Firm as a bonus, commission, gratuity or otherwise in connection with any transaction by a customer.

(6) agree to any departure from or alteration of any terms or conditions of a customer's agreement without specific written consent of an officer.

(7) rebate to any customer any part of the compensation he receives as a Registered Representative.

E. L. Aaron & Co., Inc. specifically prohibits the violation of the above rules by its Registered Representatives.

In addition, the Registered Representatives are specifically prohibited by E. L. Aaron & Co., Inc. policy from the following:

(1) Warranting or guaranteeing the present or future value or price of any security or that any company or issuer of securities will meet its promises or obligations.

(2) Agreeing to repurchase at some future time a security from a client for their own account, for the account of E. L. Aaron & Co., Inc., or for any other account.

(3) Raising money, or participating in the raising of money for any company, individual or venture without permission of E. L. Aaron & Co., Inc.

(4) Acting as personal custodian of securities, stock powers, money or other property belonging to a client without permission of E. L. Aaron & Co., Inc.

(5) Arranging for the extension or maintenance of credit to or for any client without the permission of E. L. Aaron & Co., Inc.

(6) Enter into any business transaction jointly with a client without permission from E. L. Aaron & Co., Inc.

(7) Forward, or agree to forward, confirmations or statements of account other than to the official post office address of the client.

This list is by no means anticipated to be all inclusive.

PURCHASES OF LOW-PRICED, UNLISTED SECURITIES

It is Firm policy to warn clients dealing is low-priced issues of the risks inherent in such transactions. Over the years we have found such investments to be hazardous. Consequently, the Firm has adopted the following policies:

(1) No Registered Representative may recommend or otherwise solicit the purchase of any security trading at $5.00 per share or less, regardless of whether the security is listed or unlisted without first informing an officer of the Firm.

(2) A Registered Representative may accept an unsolicited order from a customer to purchase securities trading at $5.00 per share or less, however, the Registered Representative should attempt to obtain a letter of non-solicitation from the customer, which confirms that the purchase order was unsolicited and the result of the customer's independent evaluation of the merits of the security.

(3) All purchase order tickets for securities selling for under $5.00 should be marked "solicited" or "unsolicited" which ever is the case.

MASTERMINDING THE MARKET

A Registered Representative must not attempt to "mastermind the market." Orders are either entered at the market or at a limit. All orders must be entered when and exactly as given by the client. In the event unusually large orders are entered, the Firm's Trading Department is always available to assist in handling such orders.

No transfer of securities or funds from one account to another should be effected without the prior written instructions of the customer. Whenever such a transfer is approved and made, both sides of the transfer should receive notices. The customer should be advised in advance that commissions must be charged if the transfer is for value and, that applicable transfer taxes must be paid where there is a change of ownership.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

E.L. AARON & CO., INC.
ET. AL.

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served by United States mail, first class, postage prepaid, a true copy of the AFFIDAVIT OF PETER AARON IN OPPOSITION TO PLAINTIFF'S REQUEST FOR A PRELIMINARY INJUNCTION upon counsel for plaintiff, addressed as follows:

Barry Mandel, Esq.
New York Regional Office
of the Securities and
Exchange Commission
26 Federal Plaza
New York, N.Y. 10007

/s/
CHARLES J. HECHT
Attorney for
Peter Aaron

July 30, 1976

jksr

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------------x

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- v s - : 76 Civ. 0907

E. L. AARON & CO., INC., :
LAWN-A-MAT CHEMICAL & EQUIPMENT
CORP., EDWARD L. AARON, PETER E. :
AARON, NORMAN LAWRENCE SCHREIBER,
DONALD DARWIN JACOBSON and :
DANIEL DORFMAN,
:
Defendants.
:
---------------------------------------x

Before:

HON. LEE F. GAGLIARDI,

District Judge.

New York, New York
January 11, 1977 - 4:55 p.m.

Appearances:

WILLIAM D. MORAN, ESQ., Administrator,
Attorney for SEC;
By: BARRY J. MANDEL, ESQ.,
GEORGE SCHIFREN, ESQ., of counsel.

CHARLES J. HECHT, ESQ.,
Attorney for Peter Aaron.

THE COURT: What witnesses are here that have to get out of town?

MR. SCHIEREN: Your Honor, we have four investor witnesses of one other person to offer testimony who are from out of town. It is rather short testimony in that respect, as far as plaintiff's direct case is concerned.

THE COURT: All right, let's see what we can do within reason. Sorry we couldn't have started earlier, but there are a lot of things that happened, and yesterday nothing was accomplished.

Can I ask some questions before we start here?

MR. SCHIEREN: Sure.

THE COURT: Why isn't there a stipulation of agreed facts and a stipulation of the relevant issues?

MR. SCHIEREN: Well, your Honor, plaintiff has held itself available to stipulate to many facts. However, every time the parties got together it seemed we could only agree on the most perfunctory matters.

THE COURT: All I can say is you are probably both at fault for that.

MR. HECHT: We both put in relevant facts and I think we both saw the case slightly differently. You will notice, the issues are fairly similar between the parties, very similar on the issues.

We just both saw it it from a slightly different point of view.

As far as the facts go, we had a draft of about 25 facts and then because of continuing discovery, for the most part some by the defendant which went to December, and then by the plaintiff in January, they felt that there were certain facts they weren't willing to stipulate to, but we have stipulated on most of the exhibits and their admissibility.

THE COURT: As I understand it, Peter Aaron, of course, is no longer associated with Aaron & Company which is closed down.

MR. HECHT: That's correct.

THE COURT: The original request was for an injunction and since he is no longer in the securities business what is the reason? I know he is in a related field, British American Trading Commodity Futures.

MR. SCHIEREN: The defendant, in his own testimony, in deposition, indicated a willingness and a desire, in fact, to go back into the securities business.

But, in any event, here we have the question of whether the defendant in fact violated the law and, secondly, there is need for injunctive relief.

The Commission, of course, believes that both the defendant did violate the law and, in fact, there is a need for injunctive relief.

THE COURT: What is the need for injunctive relief?

MR. SCHIEREN: In the event the defendant may go back into the business at some future date.

MR. HECHT: Your Honor, from the defendant's point of view --

MR. SCHIEREN: Excuse me. One other thing, of course, in addition to charging the defendant with violations of the anti-fraud provisions, we have also charged him with violations of registration provisions and, of course, one need not be in the business of the securities field to violate the registration provisions .

MR. HECHT: Your Honor, although the defendant in this case does not have an immediate desire to go back, it is really all he knows, if something should happen to the commodity options business and, as your Honor is aware, there has been substantial litigation in that area.

And the second point is this has been a very well publicized and not -- I don't mean inadvertently by the agency, but there is some very interesting legal issues in this case, the case has received a lot of publicity on the street, and he wants to clear his name and therefore we came to an impasse.

THE COURT: All right.

Now, there is no objection to the hearing of the preliminary and permanent injunction together?

MR. SCHIEREN: That's correct.

MR. HECHT: That's correct. I think it is fair and really, the same issues are going to be tried in both.

THE COURT: Let me go further.

Count One alleges a violation of Rule 144.

MR. HECHT: Yes.

THE COURT: You can only sell unregistered securities if you meet all the requirements of Rule 144.

These facts are uncontested, are they not: 21,000 shares sold by Dan Dorfman and Fred Dorfman, who were control persons under Section 2(11)?

MR. HECHT: That is correct.

THE COURT: They were respectively the chairman of the board and a vice president and director.

MR. HECHT: Yes, your Honor, except during one period here Mr. Dorfman, I believe, was also the president of Lawn-A-Mat, at around November '74 there was a change between him and Mr. Erazo at the end of '74. I don't know the exact date, or beginning of '75.

THE COURT: Is that material in any way with respect to what we have involved here?

MR. SCHIEREN: Both Dorfmans were officers.

THE COURT: So it doesn't make any difference.

MR. HECHT: And directors, too.

THE COURT: All right.

There were 21,000 shares sold by them, so we don't need any testimony with respect to that.

MR. SCHIEREN: That's correct.

MR. HECHT: Right.

THE COURT: These shares were sold to J. W. Weller & Company, a New Jersey broker, and were then transferred to Aaron & Co.

MR. SCHIEREN: There were transactions, confirmations indicating that is the way the trade appeared.

MR. HECHT: They were sold to Weller. Weller acted as the Dorfmans' agent. Weller, in return, resold them to Aaron & Co., one of the market makers.

THE COURT: All right. Is that undisputed?

MR. SCHIEREN: That's correct.

THE COURT: All right. Then we don't have to have any testimony with respect to that.

Three: Peter Aaron arranged or supervised these transactions.

MR. HECHT: That is where we have some dispute. That is a major disputed fact.

THE COURT: All right.

Four: Aaron acquired shares for its own account and solicited sales.

MR. HECHT: They solicited subsequent retail sales of that security, once they had taken it into their account, that is not disputed, and the trading sheets have been admitted into evidence or stipulated they would go in.

THE COURT: All right. Then we don't need any testimony with respect to that, do we?

MR. HECHT: No.

THE COURT: All right. Now, the violation is alleged, Rule 144(g)(1), to sell unregistered stock you must act as agent for the seller.

MR. SCHIEREN: That is correct.

THE COURT: Here Aaron acted as principal for its own account.

MR. HECHT: That's right.

THE COURT: All right. That is agreed.

Dealing through Weller, who was merely an intermediary-conduit did not make the transaction legal; is that the question?

MR. HECHT: Yes and no, your Honor. Basically, I think we explained to your staff, we feel 144 here -- it is really a question of law, and the question of who has the burden of the exemption and (b), the more important, that this transaction complied both in substance and in form to Rule 144(g)(1) because the key party here is the selling stockholder -- that happens to be the Dorfmans. They have the burden of sustaining the exemption. The second party that has the burden of sustaining the exemption is the issuer which in this case, is Lawn-A-Mat. And the third party is counsel to the issue, which in this case was Milton Kean. There is no dispute that he gave a valid opinion letter.

The SEC's position is, in effect, that the market maker Aaron & Co. subsequently purchased the stock from Dorfman's agent which, in this case, was Weller & Co., and our position is that the state of the law, as well as the state of the practice on Wall Street, is this is the only way the transaction could have been done, and there was absolutely no harm to the public or to the Dorfmans.

In short, they got a price for their stock that was commensurate with the price of the stock of Lawn-A-Mat being traded, except in the case of Fred Dorfman; he had a fairly large block, that is 20,000 shares that were sold, in effect, at a discount to give effect to the blockage.

THE COURT: Let me ask you this: Has Rule 144, since the transactions involved here, been amended to make what transpired here perfectly legal?

MR. SCHIEREN: Absolutely not, your Honor.

MR. HECHT: We feel it has. We feel that although the March amendments -- and we have expert witnesses who will testify, the March 1974 amendments made it clear that these so-called side by side transactions are legal.

MR. SCHIEREN: I would just like to say, your Honor --

THE COURT: You dispute it?

MR. SCHIEREN: Right.

THE COURT: On the other hand, if in fact Rule 144 has since made this activity legal, if it should be found that way, then there would be clearly no need for an injunction with respect to that aspect.

MR. SCHIEREN: Your Honor, the question,

of course, is whether there was a violation and, secondly, whether there is need for an injunction.

THE COURT: Let me suggest this -- you wouldn't argue if the amendment to the rule has made this activity validly, perfectly legal, that would now press for an injunction, would you?

MR. SCHIEREN: No, your Honor. Frankly, if a person has propensity to violate the law as it is at the time he violates the law, that shows that --

THE COURT: If that should be so, maybe the SEC didn't act fast enough. Maybe it's lethargy or inaction, if so -- I haven't found that -- I don't know --

MR. SCHIEREN: First of all, your Honor, I think it is academic since it is the SEC's position that the rule has not been changed.

THE COURT: It may be academic if you satisfy me that the law has not been amended to make it legal.

On the other hand, if the law has been amended that sanctions such a transaction as took place here, then I wonder whether the exercise of equity and jurisdiction should or should not prevent issuance of an injunction on that.

All right, that takes care of Count One and we know where we stand with respect to that.

With respect to Count Two, violation of Rule 10b-5, 10(b) and 17(a), as I get it, the uncontested facts are these:

Norman Schreiber and Donald Jacobson were registered representatives of Aaron & Co.

MR. HECHT: Yes.

THE COURT: Two. They engaged in a mail and telephone campaign to sell Lawn-A-Mat stock.

MR. HECHT: Well, I wouldn't phrase it in those terms.

THE COURT: How would you phrase it?

MR. HECHT: I would say that they did engage in the retail activity, retail of Lawn-A-Mat common stock as brokers employed by Aaron.

MR. SCHIEREN: I have no problem with that, they were soliciting customers' purchases.

THE COURT: Let's get it so we get it exactly right. How have you got it, that you are both agreed? They solicited --

MR. HECHT: Soliciting purchases or soliciting offers or purchases of the common stock of Lawn-A-Mat.

THE COURT: All right.

Three. As part of that campaign they made representations concerning the stock and the company, some of which were false.

MR. SCHIEREN: That's correct.

MR. HECHT: We have a disagreement, your Honor. If they were false -- this is where we fell apart on the facts -- our position is --

THE COURT: Let's first get were they in fact false?

MR. HECHT: I don't think so. I think there is a serious question whether or not they are false.

MR. SCHIEREN: The Commission stands ready to prove beyond any doubt --

THE COURT: If you cannot agree on it, which were or were not false -- we will insert.

All right, four: Officers of Lawn-A-Mat complained to Peter Aaron on two occasions and despite the complaints the activity did not cease.

MR. HECHT: That we disagree with. No officers of Lawn-A-Mat ever contacted Mr. Aaron. Milton Kean, an attorney for the company, at least one time and maybe a few times, did call Peter Aaron with respect to the retail activity of the Lawn-A-Mat common stock.

THE COURT: Rather than officers, the attorney for Lawn-A-Mat.

MR. HECHT: That's correct.

MR. SCHIEREN: The issue is one of notice and knowledge.

THE COURT: All right. The attorney for Lawn-A-Mat complained to Aaron on two occasions.

MR. HECHT: Aaron & Co.

THE COURT: Or to Peter Aaron.

MR. HECHT: It is a little unclear. Milton Kean thought it may have been Mr. Aaron the first time and Peter Aaron the second time.

MR. SCHIEREN: We are prepared to present testimony that will indicate clearly it was Peter Aaron.

MR. HECHT: Peter Aaron's testimony at the EBT shows two calls and Milton Kean's testimony shows one and possibly two.

THE COURT: All right.

MR. HECHT: It is six and one half dozen --

THE COURT: Admission on two occasions and following which he continued -- the activity did not cease.

MR. HECHT: Okay.

There is only one objection. I don't know if you could characterize it as a complaint necessarily, the first one. But he notified them that he wanted certain things checked out or stopped. I think the best testimony is Mr. Kean's.

THE COURT: All right. It is alleged that Peter Aaron violated SEC for failure to supervise correct false and misleading statements of Schreiber and Jacobson. Of course, that comes back to whether or not the statements were false in the first place.

MR. HECHT: It goes back to an ever more basic question, your Honor, that it's never been actually litigated in an evidentiary hearing. Is Peter Aaron a control person? Under the objective test of the '34 Act he would not be deemed a control person since he is not an officer, director or ten per cent stockholder.

MR. SCHIEREN: Your Honor, I don't want to argue the merits of the case at this point in time.

THE COURT: I am trying to narrow it.

MR. HECHT: The issue is whether subjectively he is a control person. Both sides agree that that is an issue.

MR. SCHIEREN: Your Honor, I don't agree that we have to characterize Mr. Aaron as a control person as defined by the Securities and Exchange Act. Rather, we would like to treat him and regard him as a person --

the question is whether he has the responsibility or was he obligated to stop the false and misleading statements that were being made. The question is is he a person of responsibility of the firm; is he a de facto person, a person who is obligated to take certain steps to stop false and misleading representations being made.

THE COURT: Is that whether or not he is legally -- quote -- a control person?

MR. SCHIEREN: I don't believe that is the issue. I believe one can aid and abet the violations of the anti-fraud provisions without in fact being a control person.

THE COURT: All right. Have we narrowed things down so you know what I need?

MR. SCHIEREN: That's correct.

THE COURT: Let's not go beyond what we need.

All right, call your first witness.

MR. SCHIEREN: May I have one second?

THE COURT: Yes.

[Pause.]

1b

MR. SCHIEREN: Your Honor, the Securities and Exchange Commission calls as its first witness Mr. Fred Dorfman.

FRED DORFMAN, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHIEREN:

Q Mr. Dorfman, are you currently employed?

A Yes, sir.

Q By whom and in what capacity?

A I'm employed by a company called Adjust-a-Bed, Incorporated, as executive vice president.

Q For how long have you been so employed, Mr. Dorfman?

A About ten months.

Q Were you ever employed by Lawn-A-Mat?

A Yes, I was.

Q During what period of time?

A Oh, from about 1965 to about 1975.

Q In what capacity were you last employed by Lawn-A-Mat?

A I was vice president of that corporation.

Q Do you own any Lawn-A-Mat stock, sir?

A Yes, I do.

Q Did you ever sell any Lawn-A-Mat stock?

A Yes, I did.

Q Did you ever sell any Lawn-A-Mat stock in 1975?

A Yes, I did.

Q When during 1975?

A Around January, February, 1975.

Q How many shares did you sell at that time?

A 20,000.

Q Were these shares restricted shares?

A Yes, they were.

Q How many sales did you have in 1975?

A Well, it was sold in three blocks.

Q 20,000 shares?

A 20,000 shares were sold in three pieces.

Q Do you know the size of each piece?

A The first one was 5000, the second one was 5000, and the last one was 10,000.

Q Can you describe the circumstances surrounding these sales?

A Well, I got a call from Mr. Schreiber asking me if I'd like to sell some stock, and I said, "Yeah, I'd love to sell some stock." And I was instructed to, let's see, first we had to decide on the quantity of stock to sell.

THE COURT: Who had to decide when you say "we"?

THE WITNESS: Schreiber and myself, and I was instructed to call the corporate attorney to find out the actual amount of shares of stock I'm allowed to sell,and I called.

THE COURT: Did Schreiber ever ask you to call?

THE WITNESS: Yes, yes, and I called the corporate attorney who was Milton Kean, and Kean instructed me that I'm allowed to sell 20,000 shares of Lawn-A-Mat stock.

I called back Mr. Schreiber and told him I'm allowed to sell 20,000 shares of stock under 144 and Schreiber told me, if I remember correctly, the thing I'm supposed to do is fill out a form 144, and take the stock certificate and send it to a broker in New Jersey called J. W. Weller, I believe the name was.

Q By the way, Mr. Dorfman, are you referring to Mr. Norman Schreiber?

A Yes, I am.

Q Mr. Dorfman, did you have any form 144s?

A No, I didn't.

Q Where did you get the forms?

A Schreiber mailed them to me.

Q What did you do after you received the 144 forms?

A I filled out the form and I took the stock and I sent a couple of copies of the form and the stock over to Weller and I sent a copy of the 144 over to Milton Kean.

Q You sent two copies of the form and the stock to Weller & Co.?

A Yes, I did.

Q Did you know at the time of the sale for whom Mr. Schreiber worked?

A No, I did not.

Q Prior to the time of that sale had you ever heard of J. W. Weller & Co.?

A No, I did not.

Q Did you ever give Weller & Co. any information about yourself?

A No, I didn't.

Q Mr. Dorfman, I show you what has been marked --

THE COURT: Have you shown it to Mr. Hecht? He may have no objection.

MR. HECHT: I have not seen what it is.

THE COURT: If you will follow my procedure in this way -- you say you have exchanged documents -- if there is going to be no objection, show it to opposing counsel first, and we will mark it right into evidence if there is no objection.

MR. HECHT: No objection.

THE COURT: Exhibit 13.

xx (Plaintiff's Exhibit 13 received in evidence)

MR. SHIEREN: I have no further questions.

CROSS-EXAMINATION

BY MR. HECHT:

Q Mr. Dorfman, prior to today, have you ever given sworn testimony in any transaction relating to E. L. Aaron & Co.?

A Yes, I have.

Q Was that on October 10, 1975, before the SEC?

A I don't remember the date, but it was in Fort Worth.

Q And were you represented by counsel?

A No, I wasn't.

Q Was Mr. Aaron represented by counsel at that time?

A No, he wasn't.

Q Isn't it a fact that you previously testified, that in the end of 1974 you put the word out that you were interested in selling some stock?

A Yes, sir.

Q Who did you put the word out to?

A I just talked about it in general. I didn't put it out to anybody specifically.

Q Did you put out the word to certain people at the company?

A Yes, sir.

Q What were the names of those persons?

A I really don't remember who specifically.

Q Could one of them have been your father?

A No, the last person I would tell would be my father.

Q OK.

At that time were you an officer of Lawn-A-Mat?

A Yes, I was.

Q Were you a director of Lawn-A-Mat?

A Yes, sir, I was.

Q How many shares of stock did you own?

A At that time I believe it was approximately 44,000 shares of stock.

Q What was Lawn-A-Mat trading at about that time?

A At the time I sold the stock?

Q At the time you wanted to sell the stock.

A When I originally wanted to sell the stock, I believe approximately 75 cents a share.

Q At that time isn't it a fact you were thinking of opening your own business in Texas?

A Yes, I was.

Q You could have used the money from the sale of this stock for that businss?

MR. SCHIEREN: Objection, your Honor, I don't see the relevancy.

THE COURT: I can't tell yet.

A Yes, I was.

Q And at that time you were also an officer of the company, weren't you?

THE COURT: He said he was director and officer.

MR. HECHT: OK.

A Yes.

Q At that time weren't you aware that E. L. Aaron & Co. was the principal marketmaker for the common stock?

A No, sir.

Q You never called up a broker and asked about your investment of 144,000 shares and who was making the market?

A No, sir.

Q How did you find out about the price?

A I believe through the Wall Street Journal or somebody at the company. At the time I first inquired about it, you know, I really couldn't get down to these kind of specifics. I never looked into it quite as seriously as that. I never really pushed to try and sell it.

Q And when you spoke to Mr. Schreiber, isn't it a fact that he told you that he was employed by E. L. Aaron & Co.?

A I don't remember.

Q You just get a call from a broker with respect to the sale of a substantial block of stock and you don't even ask who he works for?

A I could have got a call from the guy next door asking --

THE COURT: No, no, there is no question.

Answer the question now. That is all you have to do.

A I never asked. It wouldn't have made any difference, you know; what I said was I don't remember. Now you know. The name at that time meant absolutely nothing to me. He could have told me he was from anywhere.

Q Didn't Schreiber tell you during that conversation that someone at the company had spoken to him about your interest to sell the stock?

A I don't remember.

Q Let me refresh your recollection.

I'm reading from your testimony. If this refreshes your recollection, so state. If not, fine.

MR. SCHIEREN: Could you please tell us the page and the line?

MR. HECHT: Page 23, beginning line 24.

"Q Did you ask Norman Schreiber how he came to call you?

"A Yes."

Q Was that the answer you gave to that question?

A Probably. You know, you are talking a year ago.

Q Here is the next question:

"Q What did he say?

"A He said somebody at the company, and I really don't know who, told him I was looking to sell some stock," and I said, "Yeah, man."

A Sounds all right.

Q Now, with respect to the sale of this stock, who acted as your attorney?

A My personal attorney?

Q Yes.

A I didn't have a personal attorney.

Q OK.

Was Mr. Kean acting as the attorney for the company?

A Yes, he was.

Q Did he review your form 144?

A Yes, he did.

Q And after he reviewed it, did he advise you to sign it?

A I believe I signed it before I sent it to him.

Q Did he ever call you and say that to his knowledge everything on this form is correct?

A No. He called me and said something was missing.

Q What was missing?

A I believe a date on the stock was missing.

Q And in fact you had not made any prior sales of Lawn-A-Mat stock for the six months prior to the date you signed this form?

A True. As far as I know.

Q Now, when you spoke to Mr. Schreiber, did you advise him that Mr. Kean had reviewed the form 144?

A The first time I talked to Mr. Schreiber I had not talked --

Q You mean you talked to Mr. Kean before you even spoke to Mr. Schreiber?

A No. I spoke to Mr. Schreiber first.

Q Right.

Then you talked to Mr. Kean about the form 144?

A Right.

Q Did you call Schreiber back and say that "I executed the form 144"?

A No, I called him back and said "I need a 144."

Q You mean a blank form?

A Yes.

Q Did he furnish it to you?

A Yes, he did.

Q OK.

After you filled out the form, and after Mr. Kean said, "Well, it is OK to send out," -

A Yes?

Q -- did you send it directly to Weller & Co.?

A Yes, I did.

Q Now, did you discuss sending this to Weller & Co. with Mr. Kean?

A I don't remember.

Q Do you recall Mr. Kean stating to you that Aaron & Co. was a marketmaker and under Rule 44 could not purchase the stock?

A No, sir, he did not.

Q OK.

You sold it to Weller, right? Or Weller acted as your agent?

A I guess. I don't know.

Q Did they ever tell you why they took it down in three separate blocks?

A No, sir. They told me I would get the money as they sold the stock. That's all they told me.

Q And it took them how long to sell the stock?

A I believe I got the first check in approximately a month.

Q OK.

Did you ever ask why it was taking them so long to sell the stock?

A Yes. I sure did.

Q And what did they tell you?

A It just takes that long to sell the stock. It is a big block.

Q And you understood that with a big block you might get less than if you were selling 100 shares?

A Yes.

Q Do you recall in that investigation furnishing testimony to the effect that you wouldn't have sold the stock unless you obtained Milton Kean's approval and that since Milton approved everything and it was an order it was OK to sell the stock?

A Yes.

Q And Milton Kean was company counsel?

A Yes.

Q With respect to the sale of that stock, did you pay Weller & Co. a commission?

A No. I paid them nothing. All I did was get my check.

Q Do you recall Weller & Co. charging you a commission?

A Yes.

They took it off the price of the stock. But I still received the amount I agreed to get.

Q What did you agree to get? 41 cents a share?

A I agreed to get 40 cents a share.

Q What did you get?

A I got 40 cents a share net.

Q That was net of commissions payable to Weller as your agent?

A Yes.

Q Now, do you know in fact who Weller sold the stock to?

A No, sir.

MR. HECHT: I have no further questions.

THE COURT: Anything further?

MR. SCHIEREN: No.

THE COURT: Step down.

(Witness excused)

THE COURT: Do you have to get rid of another witness tonight?

MR. SCHIEREN: Yes. The next one will be very short.

THE COURT: All right.

MR. HECHT: Your Honor, at this time the

investors are all testifying with respect to communications --

THE COURT: Do you want them out of the courtroom while they are testifying?

MR. HECHT: Yes, I do.

THE COURT: All right.

Call your witness.

MR. SCHIEREN: The plaintiff calls Anthony Azzopardi.

THE COURT: And would you ask the other investors to step out of the courtroom that you propose to call.

MR. HECHT: Can I ask a brief indulgence?

I should call my office on a motion to reargue an injunction. I got served with a 28-page brief and I am going to tell the people in my office to hold for two hours because I am going to be a little late.

THE COURT: If you will give us the phone number, we will get a message to them.

You are going to put six investors on?

MR. SCHIEREN: Five.

THE COURT: How long will you be with them?

MR. SCHIEREN: Direct examination no more than five minutes with each.

MR. HECHT: I shouldn't be very long on cross.

THE COURT: If you just write out the message after this witness is sworn, the clerk will make the phone call for you.

ANTHONY AZZOPARDI, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHIEREN:

Q Are you currently employed?

A Yes.

Q By whom and in what capacity?

A Bunker Ramo Corporation, Trumbull, as a supervisor, drafting and designing.

Q Mr. Azzopardi, do you personally own any Lawn-A-Mat stock?

A Yes.

Q How many shares and when did you acquire those shares?

A Well, all together I got 700, 300 I bought back in 1969, and 400 I bought in 1975.

Q When in 1975 did you purchase these shares?

A February. February 10th. Somewhere around there.

Q Do you recall how you were contacted in connection with this purchase?

A Well --

THE COURT: February 10th?

THE WITNESS: About February 10th.

THE COURT: All right.

A A man by the name of Norm Schreiber called me at my place of business. I don't know how he got my telephone number. But, anyway, he called me and asked me if I was a stockholder of Lawn-A-Mat.

I said, "Yes."

And he said,"Would you like to buy a few more shares, you know, a few hundred shares of stock?"

I said, "Why?"

So he said that the company -- "I would like to get you on the ground floor because the company is about to have a venture with a Japanese outfit. They are going to buy a small outfit and build a small car in the United States."

So I told him at that time, I says, "Well, I don't have any money to spare at this time," I said, "but" --

"Well," he asked, he says, "Have you any other friends?"

I says, "Not right now." I says, "I don't think so."

So I tried to cut him off. So that was the end of the call. That was in January. That was in January.

Q This phone call was in January of 1975?

A That was in January of 1975.

Q Did Mr. Schreiber say what firm he worked for?

A At that time he didn't, not that first time. I don't recall he said anything.

But then about a week or so later he called me again and he said, "Have you changed your mind?"

And I told him, I says, "Well, I don't have the money," you know.

But he kept repeating about the company with the venture with the Japanese outfit, "They are going to build a small car in the United States, this company is going to grow and you are going to make a lot of money with it."

Q Did he say anything about the price of the stock?

A Well, at the time he says, I think it was below, I don't know, between 5/8s, around 5/8s. He says, "You could get yourself 600 or 700 shares for a little more than $300."

So I told him, I says, "Well" -- he talked me into it at that time. I says, "OK." I said, "I'll try and see if I can get the money."

So he said, "I'll put the confirmation in. But if you find out that you don't have the money, call me."

So a day later I found out that I didn't have enough money. So I called his office, tried to get a hold of his office, and I told him I can't do it. So he canceled the confirmation. And that was it.

So then back about a month later, I suppose, or three or four weeks later, he called me again and he says, "The company's stock is starting to move, it is up to 3/4s." So he says, "How much money do you have?"

So I told him I have about maybe $300.

So he says, "I can get you 400 shares and you won't have to pay the commission."

So at that time I said, "OK." I said, "If you feel so strongly about it."

That's the time he mentioned it was Aaron & Co. that he was working for.

Q Did he say anything else to you at that time about the company?

A He repeated again. He says "It is going to-- the news is going to come out in a few weeks." He says, "You should get in on it now, if you are going to get into it, because in a few weeks it will be too late, because if you intend to buy it, buy it now."

He says, "It is up to 3/4s now. It is starting to move up."

And also he told me that it used to be on the National Exchange and it is going off the National Exchange, he says, "And you won't have any way of knowing what the stock is doing."

And that's true. It was on the National Exchange. The National Exchange evidently was done away with, I don't know what happened to it; the third exchange, I believe it was.

Q Do you recall if he said anything else to you about the stock of the company during this conversation?

A As far as what it is going to do?

Q Yes.

A He said it was going to go very high, he says, "and you will make quite a few dollars for yourself."

Q Did he say how high?

A No, he didn't mention any price. He just said it is going to go. He says, "You should -- we are trying to get you in on the ground floor being that you are a previous stockholder and you own the stock," and he says "I can get it for you for $300 for 400 shares without any commission."

So I said, "Well, that's great," I said, "you don't have to pay any commission.

Q Did you buy any shares?

A Then that's when I told him, "Go ahead and do it."

MR. SCHIEREN: Your Honor, I have marked as Plaintiff's Exhibit 20 for identification and 21 for identification copies of Mr. Azzopardi's confirmation reflecting his transactions and his canceled check.

THE COURT: Any objection?

MR.HECHT: Your Honor, I have no objection. But I do have one thing I don't quite understand.

He had an order to cancel. Does he have a check reflecting that or a confirmation slip from E. L. Aaron?

THE COURT: You can do that on cross-examination.

Do you have any objection to this going in now?

MR. HECHT: No.

THE COURT: All right.

Exhibit 20 is the confirmation.

MR. SCHIEREN: And 21 is the canceled check.

THE COURT: All right.

xx (Plaintiff's Exhibits 20 and 21 for identification were received in evidence)

MR. SCHIEREN: No further questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. HECHT:

Q Mr. Azzopardi, you said before you worked with Bunker Ramo?

A Yes.

Q You worked with their NASDAQ System?

A No. That is the data center. I work in the information system, in the administration.

Q So do you know anything about their NASDAQ system?

A I know something about it, yes.

Q Isn't that a system for pulling stock on an instant basis?

A Right.

Q Does that relate to over-the-counter stock?

A Yes.

Q Did it relate at one time to stocks in the

National Stock Exchange?

A I don't think they had Lawn-A-Mat. I don't remember ever punching it.

Q But you checked it out?

A And I couldn't find it.

Q When you purchased Lawn-A-Mat in 1969, who did you purchase the 300 shares from?

A That was from Merrill Lynch.

Q And how did you find out about Lawn-A-Mat?

A A few friends of mine, you know, they said -- around town, you know, because they used to have Lawn-A-Mat themselves anyway as far as their service and they liked it and they said they have the stock going out, you know.

Q And did you get a hold of its annual report?

A Oh, yes, I got an annual report a couple of times.

Q Do you recall -- did you get one every year?

A Well, yes. As I said, a couple of years only.

Q Only a couple of years?

A I don't remember. I don't recall. It was only like a single sheet or a couple of sheets, you know. That's all it was.

Q And it showed you the financial statements?

A Yes.

Q Did that include an income statement and a balance sheet?

A Right.

Q And you kept your 300 shares throughout?

A I don't know. At one time I think I sold 100. Then I bought another. In other words, I still had 300 shares.

Q OK.

And wasn't there subsequently a stock split?

A There was a two for three or three for two, something like that.

Q And what did you do with the stock that you were receiving? Did you sell those?

A Whatever it came to, I still had 300 shares. So I'm not quite sure whether I sold -- I don't know whether it was a three for two split, something like that.

Q OK. But what you did is you mean they split stock --

A I must have sold the split. That's what probably happened.

Q Do you recall if you made moneyon that particular stransaction?

A No. As a matter of fact I sold at a loss.

Q Which one? Your last group or the first group?

A The first group I sold.

Q You mean the stock at one time was much higher?

A Oh, yes.

Q OK.

With respect to -- you testified before with respect to a transaction that was canceled?

A Right.

Q Now, you also mentioned you told Mr. Schreiber that you may not have the money.

A That's why he held the confirmation. He said, "I'll hold it for you. Call me if you see you don't have enough money to cover it."

So I called him, I think it is the next morning, told him I don't have it and he canceled it.

Q And you never sent in a check?

A No, not at that time. That was in January.

Q Would you take a look at Plaintiff's Exhibit 20? Do you have a copy of it?

A Yes.

Q Do you understand what the term "principal" means when you buy an over-the-counter stock?

A That is the price that they quote, I assume.

Q Do you understand the difference between a principal and an agent?

A Now you got me. I don't understand that.

Q Now, prior to giving testimony today, did you furnish to the SEC a questionnaire?

A Yes.

Q OK.

And prior to your testimony today, did you review that questionnaire?

A Yes.

MR. HECHT: I have no further questions.

THE COURT: Anything further?

MR. SCHIEREN: I have no further questions.

THE COURT: All right.

You can step down.

(Witness excused)

MR. SCHIEREN: Plaintiff calls its next witness, Mr. Benjamin Kaback.

THE COURT: I don't think we are going to get through all five of your investor witnesses. It is 20 minutes to six now.

MR. SCHIEREN: This next witness, your Honor, is a handicapped individual.

THE COURT: I'll take care of him, but I don't think we are going to take any more.

BENJAMIN KABACK, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHIEREN:

Q Mr. Kaback, are you currently employed?

A No. I'm retired.

Q Do you have any interest in a Lawn-A-Mat dealership?

A Yes.

Q Can you describe your interest?

A Yes. I have 5000 shares of Lawn-A-Mat Chemical Corporation.

Q Are you also a Lawn-A-Mat dealer?

A Yes.

Q And where is your dealership located?

A I'm sorry. Would you speak a little louder, please? I left my hearing aid home.

Q Where is your Lawn-A-Mat dealership located?

A Around East Brunswick, New Jersey.

Q And what is the name of that dealership?

A Kalo, Inc., trading as Lawn-A-Mat of East Brunswick.

Q Mr. Kaback, you stated before you have 5000 shares of Lawn-A-Mat stock?

A Yes.

Q When did you acquire these shares?

A I bought them in March of 1975.

Q And how did you come to buy these 5000 shares of Lawn-A-Mat stock?

A My daughter, who was in the office of Kalo, Inc. and she was right across from us, came over to me and said she had received a call from a Mr. Jacobson of E. L. Aaron & Company, Inc. that he had some shares of Lawn-A-Mat Chemical Corporation stock to sell, that the company was coming out with a new car, that he had personally seen six of the models, and that the car would be out within six weeks, something like that, around that time.

Q And what did you do after your daughter told you this?

A I told her to -- I told her to call up the officers of the company whom she knew and to find out the truth of the whole thing.

She called a Mr. Krantz, who at that time I think was treasurer of the corporation, the Lawn-A-Mat Chemical Corporation, and he said, being an officer of the corporation, he could not divulge any information.

And she tried others. I think there was a Bob Raden, and he said the same thing, being an officer of the corporation, he could not give- he cannot divulge any information.

Q What did you do after she couldn't get any information?

A I told my daughter to call up Mr. Jacobson, which she did, and I spoke to him about it. And he said the same thing.

Q What did he say?

A He said that the company -- that the company is coming out with the car and it should triple in value right away and it should go much further than that.

Q He said that the price of the stock would triple?

A Would triple, that's right.

MR. HECHT: Objection to the form of the question.

THE COURT: Well, I think I understand that from what the previous answer was.

All right, go ahead.

Q Did he describe the car to you?

A Yes.

Q What did he say about the car?

A He said the car would be partly battery-driven and partly run by gas and it was something that the public would take to.

I had just come out of the hospital two weeks before and I regret to say I was not able to use cautious judgment in the matter.

Q And what did you do after you spoke to Mr. Jacobson?

A I ordered 5000 shares of the stock. At that time my life was in the balance. I had a gangrenous foot, which I had lost just a little while before that, and from the pains that are in my body, I thought it had spread,and it had spread to the other toe.

Q Were you ever contacted again in connection with Lawn-A-Mat stock?

A Yes. Mr. Jacobson called me several times after that and said he had additional shares of stock to sell. And also I believe Mr. Schreiber called me and each time I said I prefer waiting before I go in any further.

Q During what period of time did you receive these phone calls from either Mr. Jacobson or Mr. Schreiber?

A Well, they came about a week or within a week, around that time, and subsequently about a week -- several weeks after that they called me about once a week, and then they told me that I can call them collect.

And I did call them several times collect because I wanted delivery of the stock.

Q During what months did you receive these phone calls, if you can recall?

A The first call was on or around March 5th. The subsequent calls were -- I received about three or four calls during March, 1975. And subsequently it went into April. And since the car -- he had told me the latest date it woud come out would be before April 15, 1975; after April 15 it was I began making the collect calls.

MR. SCHIEREN: Your Honor, plaintiff has marked as Exhibit 15 for identification a confirmation of Mr. Kaback's sale and as Exhibit 16 for identification a copy of Mr. Kaback's canceled check.

MR. HECHT: The defendant has no objection.

THE COURT: All right. They are received in evidence.

xx (Plaintiff's Exhibits 15 and 16 for identification received in evidence)

MR. SCHIEREN: I have no further questions of this witness.

MR. HECHT: Your Honor, just one document that I need to find which I'll need for cross-examination.

CROSS-EXAMINATION

BY MR. HECHT:

Q For how long were you a dealer in Lawn-A-Mat prior to your purchase of the stock?

A I missed an important word there. Would you mind speaking a little loud?

Q Prior to purchasing these 5000 shares of Lawn-A-Mat common stock, how long were you a dealer for Lawn-A-Mat?

A Well, it is a rough situation. I was in the hospital over here at the Booth Memorial in Queens, going through a sympathectomy and my son-in-law came up to me with papers to sign --

THE COURT: Do you know the date on which you became a Lawn-A-Mat dealer? That's all we need.

THE WITNESS: Oh. I was in the hospital at that time.

THE COURT: What was the date?

Q What was the year?

A It must have been-- I'm trying to figure that out.

THE COURT: All right. Just think to yourself about it.

A It must have been the end of 1974 or early 1975.

Q That's when you first became a Lawn-A-Mat dealer?

A Yes.

Q OK.

Now, isn't it a fact that when you bought the stock you paid 1-3/8s?

A No. 1-1/8.

Q 1-1/8. And you followed the price of that stock, didn't you, for the next six or seven months?

A I was in the hospital back and forth. I had 13 admissions. Excuse me for a moment.

(Pause)

Q Take it easy. Relax.

THE COURT: Please --

A It is hitting a tender spot. That's all it is. Do you know what I mean?

THE COURT: He said don't get upset about it. All he is really asking for is information.

THE WITNESS: It is just that it comes from within me.

THE COURT: All right. Relax and don't get excited about it. No one is getting irritated with you in any way.

THE WITNESS: Trying to save the leg. I ran to Texas, to Debakey. He operated on it.

THE COURT: If you didn't follow the stock carefully, that's all you have to say.

THE WITNESS: It is just that it hit me that hard. It was a question of life or a leg.

Q Were you aware, in August, that the stock was 1/4 bid, 3/4 asked and going down substantially in price?

A What year?

Q 1974 or 1975.

A Not in August 1974.

Q How about August 1975?

A No. I knew that the stock wasn't going anywhere. Let me put it this way. I expected when th- car did not come out April 15, 1975, the car did not come out, then I became very much perturbed.

Q And did you speak to Mr. Schreiber about the car not coming out?

A Yes. I spoke to both Mr. Jacobson and Mr. Schreiber.

Q And do you recall what they said to you about the car not coming out?

A Well, they said there is a delay.

Q Did they explain --

A Which I knew.

Q Did they explain what was the cause of the delay?

[illegible] No.

Q Did you ask him what the cause of the delay was?

A Yes.

Q Now --

A I did not know-- I don't remember their answer particularly, but I know it was evasive, indicating to me that something was wrong somewhere.

Q OK.

Now, before you bought your stock, you in fact tried to find out information from the company.

You called or had your daughter call Carl Krantz?

A Yes.

Q Was he the treasurer of the company?

A Yes.

Q And didn't it strike you as a little peculiar that the company was not being responsive to your questions?

A No, it didn't strike me as being peculiar.

Q Was this company ever especially secretive?

A Just in regard to this matter, that both Mr. Jacobson and Mr. Schreiber indicated that it was something special.

Q Did youtry to call anyone else at the company besides Mr. Krantz? What were the names of the persons, if you can recall?

A I mentioned before. Bob Raden.

Q So when you thought that this was something very special, you thought that when the company was refusing to comment that they were in effect validating or verifying what Mr. Jacobson or Mr. Schreiber was saying?

MR. SCHIEREN: I object to that question.

THE COURT: Yes.

Rephrase the question.

Q You testified before, I believe, that Mr. Jacobson said it was something special?

A Yes, that they were not supposed to give out much information.

Q OK.

And then when you called Mr. Krantz --

A Yes --

Q -- OK, and I think this is accurate, you stated that they were secretive on this but they were not secretive on other matters?

A I didn't ask them about anything else.

Q OK.

What did you ask Carl Krantz?

A About the cars.

Q OK.

And what did he say to you?

A Being an officer of the corporation, he cannot give me any information in regard to the cars.

Q And did you tell him that you had found out about this from Mr. Jacobson and Mr. Schreiber?

A No.

Q And isn't it a fact that in August of 1975 you wrote the SEC in an attempt to recoup your losses in this stock?

A Yes.

Q OK.

And isn't it a fact that in that letter you never told the SEC that you happened to be a Lawn-A-Mat dealer?

A Yes. But there is a reason behind that. I was bedridden most of the time, whether in the hospital or at home, and I felt it would have no effect whatsoever in the matter, because I did not believe that being a dealer and having money invested in there would have any effect on me as an investor, that they were two separate categories.

As a dealer I had my son-in-law running the dealership, and that was money for that purpose.

However, as an investor I was the only one involved.

Q And you didn't feel this was important?

A No, sir.

Q And you asked--

A And I still think it is not important.

Q OK.

Isn't it a fact that you also, prior to the time you purchased the stock, you did not tell either Schreiber or Jacobson that you had just come out of the hospital on February 18, 1975?

MR. SCHIEREN: Objection. I don't see the relevancy of that at all.

THE COURT: I don't either.

Q Did you ever file a written complaint with Aaron & Co.?

A No.

MR. HECHT: I have no further questions.

THE COURT: All right. I think this is the last witness we are going to have tonight.

MR. SCHIEREN: Your Honor, if I may ask the Court's indulgence, we have two investor witnesses from Connecticut. They have been inconvenienced --

THE COURT: That is going to take another half an hour to three-quarters of an hour. I don't like to inconvenience them, either, but it is six o'clock at night and the gentlemen have put in a long day; they have some dictating to do; this is daily copy and I just don't think this is right. The schedule just worked out that way. I'm sorry.

Where in Connecticut are they?

MR. SCHIEREN: One is from Ridgefield.

MR. HECHT: That is 45, 50 minutes from here.

THE COURT: I know the inconvenience and I am sorry, but sometimes our schedule just does not permit it.

MR. HECHT: May I ask one request? Can we leave some of our papers here tonight?

Is there any problem leaving them here?

THE COURT: No, you can leave them with Mr. Matarese and he will put them away. We won't guarantee their safety, but they are here.

All right. We won't be able to start until 9:45.

MR. SCHIEREN: We will be available.

THE COURT: All right, 9:45 in the morning. Good night.

[Adjourned to Wednesday, January 12, 1977, at 9:45 a.m.]

— — —

WITNESS INDEX

(Tr. 56)

Name	Direct	Cross	Redirect	Recross
Fred Dorfman	16	20		
Anthony Azzopardi	31	37		
Benjamin Kaback	42	47		

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
13		20
20,21		37
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SECURITIES AND EXCHANGE COMMISSION,

76 Civ. 0907

- v s -

D. L. AARON & COMPANY, et al.

January 12, 1977

[10:35 a.m.]

— — —

MR. MANDEL: Your Honor, the Securities and Exchange Commission, if your Honor pleases, calls Paul Dudics to the stand.

THE COURT: Very well.

PAUL D. DUDICS, called as a witness by the plaintiff,having been first duly sworn, testified as follows:

***

DIRECT EXAMINATION

BY MR. MANDEL:

Q Mr. Dudics, are you currently employed, sir?

A Yes.

Q With whom and in what capacity?

A I own a Lawn-A-Mat franchise in Connecticut.

Q How long have you been so employed?

A Since 1971.

Q Do you own any stock in Lawn-A-Mat, sir?

A Yes.

Q How many shares?

A About 100 shares.

Q 100 shares, sir, or a thousand shares?

A A thousand shares. Excuse me.

Q A thousand?

A Well, $800 worth.

THE COURT: What is it? How many shares is it? $800 worth or what?

Q How many shares?

A A thousand shares.

Q When did you buy that stock, sir?

A Early in 1975.

Q And did you buy it through a broker dealer, sir?

A Yes.

Q What broker dealer was that?

A Aaron & Company.

Q How did you come to deal with Aaron & Company, Mr. Dudics?

A I was called on the telephone by Norman Schreiber, and he told me that, he explained the Lawn-A-Mat stock to me, it was going to go up and I should buy it now at a good price.

Q When did he call you, do you recall?

A Early Spring of '75. The exact date I don't know.

Q Could you tell us precisely what Mr. Schreiber said to you at that time?

A The general gist of the conversation was that Lawn-A-Mat was going to go places. He had just come from meetings with Dan Dorfman and Mr. Discount and they were going to manufacture certain items and through a division called Stellar Industries or something, and I should buy the stock now, because other people are buying it and get in while the getting's good.

Q Did he say who else was buying the stock?

A In general, he just said dealers in the Washington, D. C. area and dealers out in the midwest.

Q Did he say anything else during that conversation, sir?

A Well, yes; told me the price of the stock was going to go up. We talked about how high it would go up.

Q How high did he say it would go up?

A He indicated to me that it would go up to what it was at before, its high before, which was around $9 a share.

Q And at the time you were speaking with him what was the price of the stock?

A He was trying to sell it to me for, I think, a dollar a share.

Q Was there any reference during that discussion with Mr. Schreiber to a car?

A Yes, plastic cars.

Q Did he say something about that?

A This was part of the thing that they were going to manufacture.

Q Did he tell you anything about the car?

A Injection molded plastic car, and Mr. Dorfman always carried a little book with him and showed. pictures of it. I had seen that previously.

Q Did you receive any written materials from Mr. Schreiber?

A Yes. On one of the telephone conversations I asked him to send me some information about the company and he said he really didn't have anything at hand, but he'd look around for something, and then subsequently he sent me some material in the mail.

Q Did you ever ask anyone at E. L. Aaron & Company who was the seller of the stock that you bought?

A Yes, I wrote them a little note asking who the seller was.

Q And did you ever receive a response to your note?

A Yes, via mail.

Q And do you know who that note was from?

A One of the people in the firm.

Q Donald Jacobson?

A Jacobson, right.

MR. MANDEL: Your Honor, we have and would like to offer into evidence, if there is no objection --

THE COURT: Show it to counsel.

MR. MANDEL: They have a copy.

THE COURT: Any objection?

MR. HECHT: I don't know what he is going to show.

MR. MANDEL: Plaintiff's Exhibit 17 marked for identification, which is a confirmation for the purchase of a thousand shares by Mr. Dudics; Plaintiff's Exhibit 18, which are the written materials which Mr. Dudics received in the mail and president's letter and some financial statements, and Plaintiff's Exhibit 19 marked for identification, which is the note to Mr. Dudics from Mr. Jacobson.

THE COURT: Any objection?

MR. HECHT: I am just going through them.

Okay, your Honor, I have no objection, but I would like to point out for the record that my client has advised me that Donald Jacobson had no right to characterize himself as director of corporate finance, but other than that I have no objection.

THE COURT: Well, that is not testimony. You have no objection to the exhibit. You can bring that out some other way if you want.

MR. MANDEL: At this time the SEC has no further questions of this witness, your Honor.

[Government's Exhibits 17, 18 and 19 received in evidence.]

***

THE COURT: May I see those exhibits, please?

[Handed to Court.]

THE COURT: All right. Cross-examination.

BY MR. HECHT:

Q Mr. Dudics, isn't it a fact that at the time you purchased the stock you already had this information which Norman Schreiber had funished to you, the president's letter, and the financial statements?

A No, he sent it to me in the mail after I req[illegible]t.

Didn't you request it before you purchased the stock and you sent in your check to E. L. Aaron?

A Right. I had requested it prior to buying the stock.

THE COURT: Did you receive it before you made the purchase?

THE WITNESS: I don't recall.

THE COURT: Listen to the question then.

Q As a franchise dealer of Lawn-A-Mat, how often did Lawn-A-Mat have meetings with its franchisees that you attended each year in the last three years?

A The parent company itself, two, three, four meetings, perhaps.

Q And did you attend all those meetings?

A As a rule, yes.

Q Between June 30, 1974 and the beginning of June 1975, did you ever visit the company's premises in either Mineola or Plainview?

A I have taken trips out there, yes, but I don't remember being at those places during those dates.

Q Did you recall visiting the company's premises or premises used by the company in Plainview, Long Island?

A Right, there was one trip out there with a group of dealers.

Q Who at the company met you at this facility?

A Bob Raden was there, Pat Lore was there.

Q What was Bob Raden's function with Lawn-A-Mat?

A I don't know, it changes.

Q Was it public relations?

A I don't know what his title was at that time.

Q What was his function, to the best of your recollection?

MR. MANDEL: Objection, your Honor. We seem to be going far outside the scope of the direct. The direct was what Schreiber said to him.

THE COURT: I understand. I will permit it.

(Question read)

A What he did with us was sit down and we talked about -- I think we were there for advertising but he took us on a tour of the place and we sat down in his office.

Q When you were out at that facility, was Mr. Dorfman present, Dan Dorfman?

A I believe he was and there was another advertising fellow there with him.

Q And when you were out at that premises do you remember Mr. Dorfman showing you an automobile or parts of an automobile?

A No, I don't remember that.

Q Do you recall discussing or seeing a tractor when you were out there?

A The type that is used for the Lawn-A-Mat work?

Q Yes.

A Yes, there was one way in the back.

Q And what did they tell you about that Lawn-A-Mat tractor?

MR. MANDEL: What did who tell him?

Q Either Mr. Dorfman, the advertising man, Mr. Lore, or Mr. Raden, any one, and then I will ask who.

A He just showed it to us and that was the tractor.

Q Did they say they were going to manufacture this tractor?

A They gave me that impression from the facilities.

It was brand new.

Q The tractor was brand new?

A Yes.

Q Wasn't one of the functions of Lawn-A-Mat to make or supply equipment to its dealers?

A Right.

Q And in the past you had a problem obtaining tractors to replace tractors that you used in your franchise that were breaking down through wear and tear and old age?

A You are talking about dealers in general?

Q Right.

A This is what I have heard, yes, that they never had enough on hand or something.

Q And that this was supposedly a solution to the problem of supplying dealers with equipment?

A Yes, dealers in general,but the impression I got from Norman was that he was going -- they were going to be sold to everybody in general, not just dealers.

Q But by manufacturing it themselves obviously they would be able to supply their dealers, they could supply not only their dealers,but a lot of people who did this kind of work?

A Right.

Q With respect to this car, have you ever seen photographs of this car?

A Yes.

Q Who showed you the photographs?

A Dan Dorfman.

Q Where did he show them to you?

A One meeting I remember on Long Island at the Dealers Association meeting was in the Veterans -- what would you call it --

Q Veterans Coliseum there?

A Whatever it is where they generally met, right. He walked around with a little black notebook and it had pictures of the cars and things and this is what we were going tobe doing in the future and we were going to be making this and the company was going tobe marketing it.

Q Do you recall when this meeting was?

A No.

Q Wasn't this meeting before Mr. Schreiber spoke to you on the telephone?

A Yes.

Q So then when Mr. Schreiber mentioned this car on the telephone, it didn't come as a surprise to you, did it?

A No, only that I had heard about it but it was more confirmation of what I had been hearing.

Q From Mr. Dorfman?

A Right.

Q And at that time was Dan Dorfman the chairman of the board of directors of Lawn-A-Mat?

A I don't know what his position was at that time.

Q Was he in the management of Lawn-A-Mat?

A I assume so.

Q To your knowledge was he the largest shareholder of Lawn-A-Mat?

A That was the common knowledge, right.

Q Do you recall what Dan said to you about the car at this meeting in Nassau Coliseum?

MR. MANDEL: Objection; hearsay.

THE COURT: No. Overruled.

A He mentioned that this is something we were going to manufacture.

Q Did he mention anything about the retail, projected retail cost of the car?

A I don't recall that.

Q Did he say anything about emission controls?

A I don't recall that.

Q Do you recall if he said anything about the projected gas mileage on the car, how many miles per gallon?

A No, I don't recall that. The only thing I recall is it was going to be a plastic car.

Q Did he advise you or do you recall any statements by him relating to the company having a molding machine in Kansas City that would mold the bodies?

A Yes.

Q Do you recall what he said to you about the machine and who owned it and what the machine would do?

A I gathered that the Lawn-A-Mat Chemical & Equipment Corporation owned the facility.

Q Did he say anything about this molding machine other than what you have already testified to that you can recall?

A No, just it was determined this machine would pop these things out very quickly.

Q And would you say Mr. Dorfman was enthusiastic about this car?

A Yes.

Q Do you recall also a meeting in Connecticut at the Yale Motor Inn?

A Right.

Q Was the car discussed at that meeting?

A Yes, he had the notebook out with the pictures at that meeting.

Q And did he discuss the car in the same terms that he discussed it with respect to the meeting at Nassau Colisuem?

A Yes, he did, but we are at that particular more interested in dealer problems rather than the car itself.

Q And that meeting was also before you purchased Lawn-A-Mat stock in June 1975, wasn't it?

A Probably.

Q You tsetified before that you had requested certain information from E. L. Aaron & Company, from Mr. Schreiber?

A Right.

Q And this information is all of Plaintiff's Exhibit 18, am I correct, which is the president's letter and the financial statements?

A Right.

Q Did this satisfy your request of what information you had requested?

A At the time I requested it, it was more or less to get him off the phone.

Q Would you say that this information would have been of assistance to you in making your decision on whether or not to purchase Lawn-A-Mat stock?

A No, because I am not that well-versed in looking at financial statements.

Q You have your own franchise, don't you?

A Right.

Q And the franchise has done well, hasn't it?

A For me as an individual, right.

Q And you have books and records in your franchise?

A Right.

Q And it is a separate corporation?

A Right.

Q And you have been running it now for six years?

A Right.

MR. HECHT: I have no further questions.

MR. MANDEL: No questions.

THE COURT: You may step down.

(Witness excused)

MR. SCHIEREN: The plaintiff calls Mr. Kenneth Bergquist as the next witness.

KENNETH BERGQUIST, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHIEREN:

Q Are you currently employed?

A I am self-employed, yes.

Q In what capacity?

A Well, I have several businesses, one of them is a series of Lawn-A-Mat service vusinesses. I have a garden center and I am an owner in Heritage House Lawn and Garden Chemicals.

Q You are a Lawn-A-Mat dealer?

A Yes.

Q When did you first become a Lawn-A-Mat dealer?

A In January 1967.

THE COURT: You are a franchisee or a dealer? Is there a difference?

MR. HECHT: Yes, there may be a difference. There are also distributors there. I think he is a distributor, too.

THE WITNESS: I have purchased several Lawn-A-Mat franhises as a dealer. I have also purchased a distributorship.

Q Mr. Bergquist, do you own any Lawn-A-Mat stock?

A Yes, I do.

Q How many shares do you own?

A I believe it is approximately 1000 in my wife's name.

Q When did you acquire those shares?

A As I recall, it was two different blocks, between 1967 and 1969, in that period.

(continued on next page)

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Q During 1974 were you contacted by anyone in connection with Lawn-A-Mat stock?

A Yes, Mr. Schreiber.

Q And when were you contacted by Mr. Schreiber?

A As I recall, it started somewhere in the summer of 1972, and about for a six-month period, somewhere in there, he kept continually calling me.

Q You contacted Mr. Schreiber when?

THE COURT: '72?

Q '72?

A No.

Q 1974?

A 1974, right.

Q At approximately the summer of '74?

A Yes, somewhere in there.

Q Could it have been later in the Fall of '74?

A It could have been, yes. I'm not sure.

Q How were you contacted by Mr. Schreiber?

A As I remember, the first call was in my office. I was not there at the time. He asked that I call back. It was urgent. It had to do with Lawn-A-Mat stock.

Q And did you ever receive any letters from Mr. Schreiber?

A No, no.

Q Then did you call Mr. Schreiber back?

A Yes, I did.

Q And what did Mr. Schreiber say to you and what did you say to him?

A He said to me that as a Lawn-A-Mat stockholder and as a dealer,it was a vital interest interest to me that he tell me about all of the things that were going on in Lawn-A-Mat, that would make the purchase of additional stock beneficial to me.

He talked about Lawn-A-Mat going into the production of automobiles, into tractors, and that they were negotiating in Europe for the production of automobiles, an economy type car.

Q Did he say anything else to you at that time?

A He talked about a Joplin operation, Joplin, Missouri, where they were going to -- they have a plastic or fibreglass stamping machine, the largest in the world, that this would knock out car bodies and boat bodies and all sorts of things, and I could make a lot of money with the stock.

Q And did he say anything else to you during this conversation?

A It is difficult for me to recall.

Q Did Mr. Schreiber say what brokerage firm he worked for?

A Yes, Aaron.

Q E. L. Aaron & Company?

A E. L. Aaron.

Q Did you buy any stock at this time from Mr. Schreiber?

A No, I did not.

Q Were you ever contacted again in connection with Lawn-A-Mat stock?

A Yes, sir. He continued to call me for about six months.

Q Mr. Schreiber?

A Yes.

Q And he called you several times during this period?

A That's right, and each time it was a similar type of conversation, where it was a good thing to get in on the ground floor, where you can make big money and so forth.

Q Did he repeat his representations in connection with the automobile?

MR. HECHT: Objection to the form of the question.

THE COURT: Yes, sustained.

Q Did Mr. Schreiber say anything else to you during those conversations?

A He pounded at the point of the automobile production and the economy car was the thing that they were going to produce, and that as dealers we would be able to get franchises and sell these things, we could sell the tractors, and there is a lot of money to be made, and the stock, of course, would be commensurate in value, it would go up; we can make a lot of money on that by purchasing the stock now, on the ground floor.

Q Do you recall if he said anything else to you during these conversations?

A Well, as I stated, about the Joplin factory, that they were into, that they could produce these things, and also that at one point he told me that Mr. Dorfman was in Europe negotiating for the production of cars there.

Q Do you recall if he said anything else?

A No, I don't.

Q Do you recall if he said anything to you about the price of the stock?

A He only indicated to me that I would have the golden opportunity of getting in on the ground floor.

Q Did he say anything to you about a discount?

A Oh, yes, he did. He did mention that he was prepared to discount the stock.

MR. SCHIEREN: Plaintiff has no further questions.

***

CROSS-EXAMINATION

BY MR. HECHT:

Q Mr. Bergquist, when did you first meet Dan Dorfman?

A I believe it was approximately October 1966.

Q And was he the gentleman who interested you in becoming a franchise dealer and distributor for LAM?

A Well, the only contact, I had a salesman work for me as a rep in New YOrk, and his son had a Lawn-A-Mat franchise. That was my original contact with the concept. I contacted Dan.

Q Do you think that the Lawn-A-Mat concept, basic concept of the business was a good idea at that time?

A Well, yes, I would not have purchased it if I didn't.

Q And, in fact, you have done very well with that concept, haven't you?

A On my own, I certainly have.

Q Okay. So it is still a good concept?

A Yes.

Q Now, with respect to Mr. Dorfman, didn't there come a time when you became disenchanted with Dan Dorfman?

A That is correct.

Q When was that ?

A Well, it began in the latter part of 1968, when I saw that these idle promises got nowhere. In fact, I was the instigator of a distributor association where we tried to improve the company.

Q And you also instituted a substantial litigation against Lawn-A-Mat, didn't you?

A Oh, that came after I was threatened with dissolution by the company.

Q Okay. When was that?

A I believe in 19 -- latter part of 1975.

Q Okay. Before 1975, after you formed this association in '69, did anything -- after you became disenchanted in 1969, did anything come to your attention to change your opinion about Dan Dorfman?

A From the period when I became disenchanted?

Q Right, in '69.

A No. I am still disenchanted.

Q Okay. And in that connection, would you say that Mr. Dorfman, from what you understand, he is the type of gentleman that makes promises but doesn't perform?

MR. SCHIEREN: Objection, your Honor, to the form of the question.

THE COURT: Sustained.

Q During 1973 and 1974 did you attend any dealer's meetings?

A I believe so, surely. I attended most of them.

Q Do you recall attending a meeting in 1974 at the Yale Motor Inn?

A I remember attending meetings at the Yale Motor Inn, yes.

Q And at those meetings did Dan Dorfman ever state anything about an automobile --

MR. SCHIEREN: Your Honor, I object to the relevancy of this line of cross-examination. First of all, I believe it is outside the scope of direct, but on the second hand, I believe that the issue here is, and what the witness testified to, what the brokerage firm told him. What Mr. Dan Dorfman told him is not an issue.

THE COURT: That is all that is involved, isn't it?

MR. SCHIEREN: In addition, the plaintiff is going to call Dan Dorfman as a witness.

MR. HECHT: But the point is --

THE COURT: That doesn't make any difference. What has this got to do with what we have here?

MR. HECHT: Which, mine?

THE COURT: Yes.

MR. HECHT: It is very simple. I want to show what Dan Dorfman was saying to the dealers was exactly what he was saying to Mr. Schreiber and Mr. Jacobson and the fact that if they bought stock, those representations which the plaintiff is contending are false and misleading, were based upon --

THE COURT: You didn't buy any stock?

THE WITNESS: I did not buy any stock.

THE COURT: He did not buy any stock.

MR. HECHT: Really, his testimony is irrelevant, but there is one thing I want to point out in here.

MR. SCHIEREN: Your Honor, his testimony is not irrelevant. He was offered the stock. Solicitation.

THE COURT: Offered the stock and solicitation by Schreiber, and that is all we are involved with. Whether Dorfman did other things, I don't think has any relevance here.

MR. HECHT: Your Honor --

THE COURT: I think that's it. I know that's it.

MR. HECHT: Your Honor, I think it's --

THE COURT: Now, look, all right?

MR. HECHT: Can I explain why?

THE COURT: No. I am satisfied with my ruling.

All right, let us proceed.

MR. HECHT: Let my objection be noted.

THE COURT: It has been noted -- your vigorous objection has been noted on the record.

MR. HECHT: Okay.

BY MR. HECHT:

Q Now, Mr. Bergquist, you testified before with respect to statements by Mr. Schreiber that Lawn-A-Mat was going into production on an automobile. Do you recall that?

A Today, right now?

Q Pardon me?

A Today?

Q Today.

A Yes.

Q Prior to giving testimony today did you write a letter to the SEC?

A That is correct.

Q And in that letter do you recall what you said in that letter about the automobile?

A Not verbatim, no.

Q Okay. Do you understand the difference between building a prototype of an automobile and going into actual production on an automobile?

A Yes, I do.

Q Okay. Are you --

MR. HECHT: Your Honor, could I just go off the record for a second?

THE COURT: No, you don't go off the record in my courtroom.

MR. HECHT: Okay.

At this time I would like to show the witness a copy, a photostatic copy of a letter dated September 15, 1975, on Lawn-A-Mat stationery at 1 Ridgebury Road, Danbury, Connecticut. It is a handwritten letter. And I ask him if he can identify that document.

THE WITNESS: Yes, it is my handwriting.

Q And does that look like it is a copy, a true copy of the letter that you wrote the SEC?

MR. SCHIEREN: Your Honor, we have the

original. We will stipulate that is a copy of the original letter.

THE COURT: All right.

MR. HECHT: Okay. Your Honor, I would like it at this time marked as Defendant's Exhibit B.

THE COURT: Very well.

MR. HECHT: I did not make extra copies because I did not realize that this would be an exhibit. If I can make arrangements with the Court Reporter to subsequently Xerox an extra copy, I would like to, and then I can file this. I only have one copy of this letter.

THE COURT: You have the original?

MR. SCHIEREN: I have the original. We only have this copy.

THE COURT: That's all right. What's the difference? You have only one copy. Make it an exhibit.

Any objection to the letter going in?

MR. SCHIEREN: No objection.

THE COURT: All right, received in evidence.

*** [Defendant's Exhibit B received in evidence.]

THE COURT: Want to show it to the witness?

THE WITNESS: Okay.

THE COURT: Ask your question.

MR. HECHT: I just want to write this down for my record and keep track of the records.

BY MR. HECHT:

Q Isn't it a fact that in that letter you stated that Dan Dorfman was building prototypes of automobiles, garden tractors?

A Yes, that's correct.

Q Do you recall asking Mr. Schreiber what the source of his comments were, the basis of his comments were, withrespect to Lawn-A-Mat?

A Quite frankly, I was not interested in purchasing stock.

Q OK.

A Therefore I listened to what the man had to say each time and that was the extent of it.

Q And do you recall Mr. Schreiber stating that he had discussed this with Dan Dorfman?

A Directly stating that? No.

Q Or words to that effect?

A I can't say that he said to me that he discussed this with Dan Dorfman. He indicated to me, as I have said, that Dan was in Europe negotiating to have cars produced and the Joplin situation, as I have stated.

Q Now, did you attempt to check out that information with anyone at the company?

A No, not being interested in any purchase, further purchases of Lawn-A-Mat stock, I did not pursue it.

Q OK.

And isn't it your feeling that so long as Mr. Dorfman or anyone in his family is associated with

Lawn-A-Mat, you didn't want to buy stock?

MR. SCHIEREN: Objection, your Honor.

THE COURT: Yes. Sustained.

Q Now,in fact, when Mr. Schreiber mentioned a car to you, this was not the first time you had heard about the car, is it?

A No, it is not the first time.

Q Where did you hear about it before?

MR. SCHIEREN: Objection, your Honor.

THE COURT: Really, I don't think we are involved with where he learned it before.

The question is what kind of representation Schreiber made. That is not the issue.

MR. HECHT: Isn't another issue whether it is false or misleading and what his intent was?

THE COURT: You are not going to prove it with this witness?

MR. HECHT: I can prove there was actually a car there, it was discussed,et cetera, and there was a tractor.

THE COURT: But not what somebody else told him about it. That is not going to prove the truth of it, no.

MR. HECHT: No further questions.

THE COURT: Anything further?

MR. SCHIEREN: No redirect.

THE COURT: All right. Step down.

(Witness excused)

MR. SCHIEREN: The plaintiff calls as its next witness Mr. George Dobler.

GEORGE DOBLER, called as a witness by the plaintiff, being first duly sworn, testified as follows:

MR. HECHT: Your Honor, before we go on, I forgot to mention to you that at 4:15 I have a hearing before Judge Knapp on a motion to reargue.

THE COURT: All right. Thank you.

DIRECT EXAMINATION

BY MR. SCHIEREN:

Q Are you currently employed, Mr. Dobler?

A Yes, I am.

Q By whom and in what capacity?

A I'm president of my own company, Lawn-A-Mat of Woodmere.

Q And for how long have you been so employed?

A Six years.

Q Mr. Dobler, do you own any Lawn-A-Mat stock?

A Yes, I do.

Q How many shares?

A 200.

Q When did you acquire these shares?

A March of 1975.

Q How did you come to purchase these shares?

A I received a phone call from a Mr. Norman Schreiber in either late February or early March and --

Q Do you know what firm Mr. Schriber worked for?

A No, I don't. I do now, but at that point I don't know if I knew it or not.

Q What did Mr. Schreiber say to you at that time?

A He said that some Lawn-A-Mat stock was available and that there had been a new development in the Lawn-A-Mat company, that it was going into the low cost plastic automobile business, mass marketing, and the headquarters would be in the midwest and that this would be a good opportunity to buy the stock.

Q Did he say anything else to you during this conversation?

A Well, he gave me the impression that the stock would go up very shortly because of this new development, the company was going to really boom its business, and he could offer me a discount on the stock at this time because I'm a Lawn-A-Mat dealer.

Q Did he say anything else to you during this conversation?

A It is possible, but, you know, I'm --

Q Did he describe the car?

A He said a low cost plastic car, it would be a high mileage model, basically a utility type thing which would be, you know, a nonluxury car, but for the mass public at that point.

Q Did he say anything to you about other persons buying the stock?

A Yes. He mentioned that other Lawn-A-Mat dealers were buying the stock.

Q What did you say to Mr. Schreiber during this conversation?

A That I was interested but I would have to speak to my wife about it and I would get back to him.

Q And what happened then?

A About two weeks later he called again, and at that point I gave him the authorization to buy stock for me.

Q And that was 200 shares?

A Or sell stock to me.

Q That was 200 shares?

A 200 shares.

MR. SCHIEREN: Your Honor, I would mark as Plaintiff's Exhibit 22 for identification a confirmation from E. L. Aaron & Co.

THE COURT: No objection, is there?

MR. HECHT: No, your Honor.

THE COURT: Exhibit 22?

MR. SCHIEREN: A confirmation of Mr. Dobler's purchase.

THE COURT: All right.

xx (Plaintiff's Exhibit 22 for identification received in evidence)

MR. SCHIEREN: Plaintiff has no further questions.

CROSS-EXAMINATION

BY MR. HECHT:

Q Mr. Dobler, how many times did you speak to Norman Schreiber prior to the time you purchased the stock?

A Twice.

Q And in those discussions do you now recall that you discussed what the future earnings prospects of the company were?

A Yes.

Q And do you recall what Mr. Schreiber said to you?

A Yes, I believe he mentioned that the earnings future of Lawn-A-Mat would be increased tremendously.

Q OK.

You don't recall the use of the words he thought the "outlook was good for the earnings"?

A The exact wording I can't recall.

Q OK.

Do you recall, back in September of 1975, you responded to an SEC questionnaire sent to all dealers?

A Yes, I did.

Q OK.

MR. HECHT: At this time I would like to give the witness a copy of a four-page document which is entitled "United States Securities and Exchange Commission" and ask him if he can identify that document.

MR. SCHIEREN: Mr. Hecht, we have the original and we would be glad to furnish that to the witness.

MR. HECHT: Fine.

There was some cooperation on exhibits before, your Honor.

Q Can you?

A Yes, I can.

MR. HECHT: At this time I would like to move the admission of the original of this document.

THE COURT: Any objection?

MR. SCHIEREN: No objection.

THE COURT: All right. Exhibit C?

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[Defendant's Exhibit C for identification was received in evidence.]

Q Isn't it a fact that this questionnaire was completed by you and signed on September 12, 1975?

A Yes.

Q And that at the time you completed this questionnaire you believed your answers were full and truthful?

A Yes.

Q Now, I notice on Page 1,in answer to a question 3(c), when they asked you the name of the salesman that contacted you, you didn't remember.

A That's right.

Q It is now almost eighteen months later. What refreshed your recollection on the name of the salesman?

A On Question 6, Page 2, Question (b) asked

"If so, what was the name of the brokerage firm and person who called you?"

I have an answer there that says: "Norman ? Don't recall name of individual."

Q How did you find out his last name?

A I had a meeting with the attorney for the SEC last December, and he asked me the same question, and we examined this exhibit and he asked me was it Norman Schreiber, and I said, "Yes, that's him."

Q Now, in the answer to Question 7(b) and Subdivision (a), "Was anything said about the company's earnings, present, past or future?" Your response was: "Yes, good outlook."

Now, isn't that far different from saying that the company is going to go through the roof, it is going to increase substantially, what you testified to today?

MR. SCHIEREN: Your Honor, the witness did not testify the company's earnings would go through the roof.

MR. HECHT: Okay. My paraphrase.

A No. I feel "good outlook" means increased earnings and good prospects and things like that.

Q You were a Lawn-A-Mat dealer, isn't that correct?

A That's right.

Q And you had access to their financial statements, statements, didn't you?

A I suppose I did, yes.

Q Did you ever ask for them?

A No.

Q Were you aware that they were available at the SEC?

THE COURT: The question is: Did you have them or not? That is the real question.

Did you ever see them?

THE WITNESS: I never saw them.

Q And you never asked for them?

A No.

Q Would you look at Item 8, Question 8? It asks for "Any other statements, whether favorable or unfavorable, that were said on the phone." You said that "The company was considering doing an electric car."

A That's correct.

Q Was Mr. Schreiber very clear that they were just considering building one or that they were in production? Isn't it a fact that he specifically advised you that it "was in the developmental stage and they were just considering building a car"?

A Very possibly. I don't recall him saying it was in production. I didn't get that impression, that it was in production.

Q And there is no doubt in your mind now that your impression was very clear that it was in production?

A Correct.

Q And you understand the difference between "in production" and "in the developmental stage"?

A I believe so.

Q Prior to Mr. Schreiber's call, had you ever heard anything about this contemplated car before?

MR. SCHIEREN: Your Honor, objection.

THE COURT: Sustained.

MR. HECHT: I have no further questions.

THE COURT: Any further questions?

MR. SCHIEREN: No redirect.

THE COURT: You may step down.

[Witness excused.]

MR. SCHIEREN: Next witness for the plaintiff is Mrs. Harriet Maniatis.

HARRIET MANIATIS, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHIEREN:

Q Mrs. Maniatis, are you currently employed?

A Yes, I am.

Q By whom and in what capacity?

A I work for the Lawn-A-Mat Chemical and Equipment Corporation. I'm the office manager there.

Q And for how long have you been so employed?

A Approximately ten years.

Q Are you also a Lawn-A-Mat dealer?

A My husband is a Lawn-A-Mat dealer, yes.

Q And how long has he been a Lawn-A-Mat dealer?

A Approximately seven years, now.

Q Do you own any Lawn-A-Mat stock?

A Yes, we do.

Q How many shares?

A About a thousand shares.

Q And when did you acquire this stock?

A Oh, we bought the stock, I would say, about four years ago.

Q Were you ever contacted during 1975 in connection with Lawn-A-Mat stock?

A No. We received a letter from the E. L. Aaron Company approximately in '75.

Q Do you recall when?

A Do I recall when?

Q Approximately when you received the letter.

A April or May, I suppose.

Q And from whom was the letter?

A From a Mr. -- well, it was from E. L. Aaron. I believe it was signed by a Mr. Schreiber.

MR. SCHIEREN: Your Honor, if I may, I would like to show the witness Plaintiff's Exhibit 14.

THE COURT: Very well.

MR. SCHIEREN: Counsel received a copy of this letter.

Q Mrs. Maniatis, is Plaintiff's Exhibit 14 a copy of a document which you received?

A Yes.

MR. HECHT: I would like to object to the form of the question because what you are submitting does not indicate that she directly received it as is.

THE COURT: There are notations on that?

MR. HECHT: Yes.

THE COURT: Except for the notations, is this what you received?

THE WITNESS: Yes, correct, it is.

THE COURT: Very well.

MR. SCHIEREN: I offer that document in evidence.

THE COURT: Except for the notations.

Q Mrs. Maniatis, did you make those notations on that letter?

A Yes, I did. This is in my handwriting.

Q Did you make it subsequent to receiving that letter?

A Yes.

THE COURT: Any objection?

MR. SCHIEREN: Your Honor, I don't need the notations.

MR. HECHT: No objection.

THE COURT: There is no objection. Received in evidence.

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[Plaintiff's Exhibit 14 for identification was received in evidence.]

Q Mrs. Maniatis, after you received Plaintiff's Exhibit 14, what did you do?

A I decided that I would call this man Mr. Schreiber, and I did.

Q And what did you say to Mr. Schreiber and what did Mr. Schreiber say to you?

A Well, I asked Mr. Schreiber -- I told him who I was. And then he went on to talk to me about different things.

Q What did he say?

A Well, he said that the company is doing very well, that we were hoping to do -- Lawn-A-Mat was hoping to do $5,000,000 this year and approximately $25,000,000 in maybe five years.

He told me that the company is dealing with certain chemical companies that they are hoping to buy. He gave me a lot of information that I thought it was unnecessary for a stock broker to be giving anyone. I considered it as things that were not my business or any stockholder's business, really.

Q What did he say?

A He told me that Lawn-A-Mat owned a Majestic Seed Company. He told me that Mr. Erazo was now heading the Lawn-A-Mat Company and that Mr. Dan Dorfman was busy doing other things. He told me about stocks that other dealers in the company had, how many they had and --

Q How many shares of Lawn-A-Mat other dealers had?

A That's correct.

Q Did he say anything else to you?

A He said that Lawn-A-Mat had an option to buy the Stellar Industries Company and that they in due time would be building the equipment for the Lawn-A-Mat Company.

Q What equipment?

A The equipment that is used in our business, which is a combine, a tractor, the machinery that is used for the Lawn-A-Mat business.

Q As a result of this conversation with Mr. Schreiber, did you buy any stock?

A No, I did not.

MR. HECHT: The plaintiff has no further questions.

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CROSS-EXAMINATION

BY MR. HECHT:

Q Mrs. Maniatis, as the office manager for Lawn-A-Mat, are you required to spend substantially all of your working time on the premises of Lawn-A-Mat?

A Oh, yes.

Q Okay. Isn't it the fact that at that time Mr. Erazo was president of Lawn-A-Mat?

A At the time that Mr. Schreiber called me?

Q Right, on April 28th.

A Yes, he was.

Q Isn't it a fact that Mr. Dorfman at that time was primarily serving in a consultant capacity to the company and was not active in its day-to-day operations?

A That is correct.

Q And were you aware, or did you see Mr. Schreiber or Mr. Dorfman on the premises of Lawn-A-Mat prior to speaking to him on the phone?

A I don't know Mr. Schreiber. If I saw him today I wouldn't know him.

Q How about Mr. Jacobson?

A I don't know Mr. Jacobson either.

Q When Mr. Schreiber was talking about revenues, the fact that he was talking about the revenues with all of the Lawn-A-Mat dealers as distinguished from the revenues for the parent company?

A No. Well, the way I understood it was that the parent company would be making this kind of money.

Q Well, as the office manager, you have access to the financial information, don't you?

A That's correct.

Q And weren't the sales of Lawn-A-Mat in 1973, for that year, substantially less than $5,000,000?

A Yes.

MR. SCHIEREN: Your Honor, I object.

THE COURT: No.

Q And you understand that Lawn-A-Mat obtains its income from two sources, the sales of franchises and fees paid by its dealers?

A Correct.

Q So therefore its revenues would be less than the overall revenues of its dealers out in the field, wouldn't it?

A Yes, I guess so. I never thought about it, to tell you the truth.

Q Okay. Now, with respect to Majestic Seed, isn't it a fact that one of the seeds distributed and utilized by Lawn-A-Mat is a seed that is known in the trade as a Majestic seed?

A That's correct.

Q And is that a hybrid or is it a pure strain?

A I believe it is a hybrid seed.

Q And isn't it a fact that Lawn-A-Mat has the exclusive right to utilize that seed?

A That is correct.

MR. HECHT: I have no further questions.

THE COURT: All right.

MR. SCHIEREN: I have no further questions, your Honor.

THE COURT: You may step down.

[Witness excused.]

MR. SCHIEREN: Plaintiff calls as its next witness Mr. Fernando Erazo.

FERNANDO ERAZO, called as a witness by the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHIEREN:

Q Mr. Erazo, are you currently employed?

A Yes, I am.

Q By whom and in what capacity?

A I am the president of Amereq Industries, Inc.

Q And for how long have you been so employed?

A Well, it's my company, so I began organizing it sometime in November and we have been active since about July of this year.

Q Were you ever employed by Lawn-A-Mat?

THE COURT: July of '76.

THE WITNESS: July of '76.

Q Were you employed by Lawn-A-Mat Chemical & Equipment Corporation?

A Yes, I was.

Q And during what period?

A My service began as an employee of Lawn-A-Mat in October of 1974 and ended in August 22nd of 1975.

Q What positions did you maintain at Lawn-A-Mat?

A I was hired as the executive vice president, chief operating officer, and in May of 1975 I was given the title of president and chief executive of the company.

Q What were your duties, Mr. Erazo, while you were employed at Lawn-A-Mat?

A I would characterize them as that of a general manager. I would say in charge of the business of the company, in charge of its operations, administration, service, products, marketing and supervision of my staff.

Q Mr. Erazo, are you a defendant in this lawsuit?

A Yes, I am.

Q What is your status in connection with this lawsuit?

A I signed the consent for permanent injunction.

Q During the period of your employment at Lawn-A-Mat, Mr. Erazo, did you ever receive complaints about E. L. Aaron & Company or any of its employees?

A Yes, we did.

Q When did you receive these complaints?

A The complaints came to my attention, I would say, sometime in the last part of January, first part of

February of 1975.

Q What was the nature of these complaints that you received?

MR. HECHT: I would like to object to the form of the question because there is nothing in the record that shows that he received them directly.

THE COURT: No, he said he received the complaints. That is his testimony.

Overruled.

Proceed.

A The nature of the complaints, I would say they were misrepresentations of what the company was doing.

Q Misrepresentations of what Lawn-A-Mat was doing?

A Of what Lawn-A-Mat was doing, yes.

Q Could you be a little more specific?

A Well, the specific complaints that came to my attention were that the company was in the process of building an automobile and one of the dealers was requesting that we save a dealership for him. That was the nature of the complaints essentially that I was aware of at the beginning of that period of time.

Q And what did you do after you became --

after you received these complaints?

A We called Mr. Milton Kean who, to my understanding, was our SEC compliance attorney and counsel for the firm.

Q And what did you tell Mr. Kean?

A We asked Mr. Kean to contact both Mr. Jacobson and Mr. Schreiber and find out exactly what is happening because we had no knowledge of any of these aspects being done by Lawn-A-Mat.

Q And do you know if Mr. Kean ever acted upon your statement to him?

A Well, I do recall that in a subsequent meeting sometime in April of 1975, I recall a telephone call that Mr. Kean placed to Aaron & Company. I do not recall exactly who he spoke to but --

Q Let me ask you this question: Were you present when Mr. Kean made this phone call?

A Yes, I was.

Q And did he call Aaron & Company on the telephone ?

A Yes, he did.

Q Did you hear the conversation?

A The conversation went something like, "Your boys have been at it again, and through the speaker, because it was a speaker phone, the boys on the other end indicated, "Well, let me check it out again," and that is the extent of the conversation.

Q You don't recall who Mr. Kean was speaking to on the other end of the phone, do you?

A Well, I know that Mr. Kean called Aaron & Company. Whoever answered the telephone, I do not know who he specifically spoke to.

Q During the period of your employment at Lawn-A-Mat, was Lawn-A-Mat manufacturing or planning to manufacture tractors or combines?

A Lawn-A-Mat was not manufacturing or planning to manufacture tractors or combines.

Q During the same period of time was Lawn-A-Mat manufacturing or planning to manufacture an automobile?

A No.

Q Was Lawn-A-Mat contemplating a listing on the American Stock Exchange?

A No.

Q Was Lawn-A-Mat planning to acquire any chemical suppliers?

MR. HECHT: Objection to the form of the question. He is leading the witness.

THE COURT: No, he is not leading.

Overruled.

A Lawn-A-Mat was not planning to acquire its chemical suppliers.

Q Did you ever hear of Majestic Seed Company?

A In the industry there is not a Majestic Seed Company. There is a seed called Majestic seed.

Q Was Lawn-A-Mat acquiring or planning to merge with Rainbird?

A No.

Q What is Rainbird?

A Rainbird is a sprinkler system or a group of systems, to the best of my knowledge. It is a well known name in the sprinkler industry.

Q Is it a company ?

A I would say Rainbird is a company. I don't know if that is the name of the company but that is the tradename of the products, Rainbird.

Q Was Lawn-A-Mat planning to introduce a car on the market in April of 1975?

A No.

Q Was Lawn-A-Mat acquiring or planning to acquire to fertilizer manufacturer?

A Lawn-A-Mat did not plan to acquire a fertilizer manufacturer. We were hoping to establish our own blending plant.

Q Was Lawn-A-Mat planning to pay dividends?

A Not to my knowledge.

Q During the period of your employment were Lawn-A-Mat's earnings actually improving?

A I would say no. We were in a period of solidification.

Q Was Lawn-A-Mat during this period working with a Japanese company to build a car?

A No.

Q Was Lawn-A-Mat going to have $5,000,000 in sales in 1975?

A I don't know what its sales would have been for Lawn-A-Mat in 1975. I didn project to the board that Lawn-A-Mat would do $3,000,000 in 1974.

Q What about in 1975?

A I do not --

Q Was there any projection that Lawn-A-Mat would make $5,000,000 in sales in 1975?

A I do not recall that particular statement.

Q Was Lawn-A-Mat planning to have $25,000,000 in sales in five years?

A No. I do remember the figure of $25,000,000 to be a figure that we were expecting to reach among all the dealers of the company in services rendered to the public.

Q But not the parent company itself, is that correct?

A No.

Q Was Lawn-A-Mat making any new products during this period?

A Any new --

Q Products.

A Well, Lawn-A-Mat didn't make any products.

MR. SCHIEREN: The plaintiff has no further questions of this witness.

MR. HECHT: Your Honor, the cross-examination is going to be substantial, with a substantial number of exhibits. Can I have five minutes just to organize the exhibits?

THE COURT: No, let's proceed.

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CROSS-EXAMINATION

BY MR. HECHT:

Q Mr. Erazo, do you recall your testimony before with respect to complaints as you described them?

A I may.

Q What was the source of the information, your secretary?

A Through my office, my assistant and secretary, yes.

Q Isn't it a fact that you never called the persons who allegedly called your secretary to find out the true nature, if there were complaints?

A We refer all our calls to our attorney because I felt I was not in the position to discuss SEC matters or the market on Lawn-A-Mat stock with anybody, and I left that to our attorney. For that we submitted a -- we tried to accomplish a meeting of the parties so all these things should be clarified.

Q Isn't it a fact that one of these dealers was a Mr. Popham?

A Yes, Mr. Popham .

Q Isn't it a fact that you never called Mr. Popham to find out what his version of the story was?

A I don't believe that was up to me either. I believe that that was up to our attorney to continue the verification of these things.

Q Isn't it a fact that you never asked Milton Kean -- or did you ever ask Milton Kean if he called Mr. Popham?

A I do not recall.

Q Well,as the president of the company -- and also a member of the board of directors, weren't you?

A I was not the president of the company at that particular time, Mr. Hecht.

Q You were vice president?

A Yes.

Q And chief operating officer?

A Yes.

Q And were you also a director of the company?

A Yes, I was.

Q And you never personally verified these calls?

A I do not recall personally verifying these calls that Mr. Kean may have made.

Q Did you ever call Mr. Schreiber about these complaints?

A I had my office call Mr. Schreiber and we also wrote to Mr. Schreiber.

Q I want to try at the lunch break to find the particular document that we have referred to before in connection with your testimony. You gave testimony before, didn't you, at an examination before trial?

A Yes, I did, in your office.

Q Right. But you never took the trouble to personally call Mr. Schreiber --

MR. SCHIEREN: Objection.

THE COURT: Sustained as to form.

MR. HECHT: Okay.

Q Now, at that time you were located out in Mineola?

A Yes, we were.

Q Do you recall when these complaints first came in?

A As I mentioned before, I recall them coming in to my attention sometime in the last part of January, first part of February.

Q January 1975?

A '75, that's correct.

Q And at that time you were located in Mineola?

A Yes, sir.

Q At that time were you aware of United Stellar out in Plainview?

A Yes, I was.

Q Is that where this car was supposedly being developed?

A I don't know where the car was supposedly being developed. I was not aware that the car was supposedly being developed.

Q Did you ask any questions of anyone else at the company about this car?

A Certainly.

Q Who did you ask?

A I asked Mr. Dorfman.

Q And what did Mr. Dorfman tell you?

A Mr. Dorfman indicated that in the plant that United Stellar owns in Joplin, Missouri, there is a large molding plastic machine that he feels could be utilized for the plastic molding of the bodies of automobiles.

Q And didn't Mr. Dorfman also describe the facility out in Plainview and what they were developing there?

MR. SCHIEREN: Who was developing,your Honor.

MR. HECHT: We are talking about the car, that aspect of the car.

MR. SCHIEREN: Who was developing?

MR. HECHT: We will get it.

Q Someone was developing -- there was work being done out in the United Stellar facility in Plainview?

A To which I had no access since apparently the companies were in litigation at that particular time still.

Q How do you mean you had no access? You couldn't get into your car and drive out there? It's a twenty-minute drive, isn't it?

MR. SCHIEREN: Objection, your Honor.

THE COURT: Sustained.

Q You became the president of this company in May of 1975?

A That's correct.

Q And prior thereto you were the chief operating officer of the company?

A Yes.

Q And if there was a rumor going around that your company was producing or developing a car, wouldn't that be of concern to you?

A It certainly was of concern to us, yes.

Q And from your testimony I understand other than Mr. Kean you didn't call anyone else with respect to this?

A I felt that this was a legal matter. These were items that were discussed with Mr. Lore, Mr. Dorfman, Mr. Kean, and I felt that a meeting to this extent would clarify not only the statements but also the things that were being said.

Q OK.

Well, prior to receiving these complaints, did you know who Mr. Schreiber was?

A I was informed some time in December of 1974 that a Mr. Schreiber wanted to meet with me. This came from Mr. Carl Krantz who was the secretary and treasurer and director of the company.

Because of a particular fied trip that I had at the moment, I don't believe I was able to meet him in December, but I did meet with Mr. Jacobson some time in January, the third week in January of 1975.

Q Let's go back prior to that time.

Prior to meeting Mr. Jacobson, did you know who Mr. Schreiber was?

A I was informed that Mr. Schreiber was a stockbroker for the company.

Q OK.

And did you have any communications with your dealers or distributors with respect to Mr. Schreiber's activities on behalf of the company?

A I was inquired, if I recall correctly, by one or more dealer, if they wanted to buy stock, who should they contact, because they had no access to any particular listing of any kind.

At that time, since I was new in the company and this name had been provided to me by a director of the firm, I had mentioned to them that they could contact Mr. Schreiber, yes.

Q And isn't it a fact that you sent out to all of the dealers distributors a notice that Mr. Schreiber was handling the stock for the company and if they had questions or wanted to buy stock, they should contact him directly?

A No, that is not a fact. The fact is, Mr. Hecht, that I submitted a listing to a group of people who inquired about it, not to all dealers and distributors.

MR. HECHT: Let the record reflect that I am handing to the witness, and to the secretary, a copy of a one-page memorandum dated January 2, 1975, and I ask the witness if he can identify this.

THE WITNESS: I do not know if this is the first time that I am seeing this, Mr. Hecht. I will say that whatever cover, whatever memo was submitted, it was cleared through Mr. Kean, and Mr. Kean dictated the memo to my secretary to be sent out.

Q That is something else. I am talking about this particular item sent out under your signature to all the distributors and dealers.

A I do not recall it.

Q Are you saying it is a forgery?

A No, I'm not saying it.

MR. SCHIEREN: I don't see any signature on this document.

THE COURT: It hasn't been introduced yet.

A I do not recall this memorandum. I have never met Mr. Schreiber or spoken to him or Mr. Jacobson until --

THE COURT: You don't recognize that memo at all?

THE WITNESS: I do not recall this memo.

MR. HECHT: Your Honor, I'd still like that identified as Defendant's Exhibit D.

THE COURT: It should be marked even before it is given to the witness.

Defendant's Exhibit D for identification.

xx (Defendant's Exhibit D marked for identification)

Q Isn't it a fact that when these calls came in from Mr. Popham -- his call wasn't a complaint, was it?

A His call was a call requesting that we reserve a dealership on the automobiles.

Q And isn't it a fact that during the month of January he is the only dealer who contacted you with respect to the activity of E. L. Aaron & Co.?

A I believe not, sir.

Q Do you recall giving testimony before trial on October 15, 1976 at my office?

A I do, yes.

Q Are you aware that your testimony was taken before someone authorized to give oaths, it was under oath?

A Certainly.

Q Do you know the names of any other dealers who called in and complained during the month of January?

A As I believe I said in my testimony, Mr. Hecht, I do not recall the quantities or the names of all the dealers who called to complain, but I can recall names of dealers who called, like Mr. Anderson from Connecticut--

Q But that was way after January, wasn't it?

A I do not recall when it was, Mr. Hecht. I have made it clear that I do not recall at that time.

MR. HECHT: OK. I'm referring now, the SEC, page 40 of his examination before trial. The question is at line 18.

"Q Do you recall the names of the other dealers, other than Mr. Popham, who called in this initial 'batch of calls'?"

Do you recall that question?

A I recall that question.

Q OK.

Do you recall if you furnished this answer:

"A Nobody called me directly. The calls were received by my secretary most of the time, and she in turn immediately called Mr. Kean every time we received a call."

A I recall that answer.

Q And it was a truthful answer at that time?

A It is still at this time.

"Q Did she make a list of these calls or keep any independent record of these calls?"

Do you remember that question?

A Yes, I do.

Q Do you remember that your answer was:

"A I do not know."

A I remember that answer, yes, sir.

Q OK.

Then your attorney spoke.

Now, do you recall receiving anything from Mr. Schreiber stating that he had received a complete list of the Lawn-A-Mat distributors and dealers from you for use by E. L. Aaron & Co.?

A I do recall, Mr.Hecht, that my office submitted a listing to Mr. Schreiber and Mr.Jacobson of the distributors and dealers, upon approval from our attorney and counsel, Mr. Kean, because they had already these names available and they wanted to confirm their names and addresses, and I believe that the cover letter that was submitted also indicated the purpose of how that listing should be utilized.

MR. HECHT: Your Honor, at this time I'd like marked as Defendant's Exhibit E a memorandum dated January 28, 1975, from Norman Schreiber to Fernando Erazo.

xx (Defendant's Exhibit E marked for identification)

MR. HECHT: Let the record reflect that a copy of this exhibit marked Defendant's Exhibit E has been furnished to the witness and he is now reviewing the same.

THE WITNESS: I do not recall reading this memorandum, Mr. Hecht.

Q It is to you and it is signed by Mr. Schreiber.

You don't recall ever seeing this?

A That is absolutely right. I do not recall seeing it.

Q Doesn't this refer to the last exhibit I gave you, which is the authorization for the dealers to contact-- for Mr. Schreiber and E. L. Aaron & Co. to contact the dealers?

A I don't know if it refers to that. I have not seen this memo and I have not seen this memorandum either.

MR. SCHIEREN: The witness testified he could not identify the first exhibit so how could he refer to it?

THE COURT: You are a little late getting up, but I am aware of it.

Were you aware in January 1975 that E. L. Aaron already had a stockholders list of Lawn-A-Mat?

THE WITNESS: I do not recall I became aware that they had a listing. I do not know when I became aware of it. I believe it came about in our meeting of April 13th. I do not recall the exact date, but it was a surprise to me that they had a listing that had been provided by Mr. Krantz, if I'm not mistaken.

Q Did Mr. Krantz describe-- what did Mr. Krantz state to you with respect to the list?

A He said he cleared it with Milt.

Q And did you check it with Milt?

A We discussed the fact that they had a listing there. I don't recall the conversation.

Q Did you discuss this in December of 1974 or prior thereto?

A I do not remember, Mr. Hecht.

Q Did you ever see any correspondence between Lawn-A-Mat and E. L. Aaron with respect to a stockholders list?

A No, not to my knowledge.

Q Now, in February, do you recall submitting a letter to Mr. Schreiber, under your signature?

A Yes, I do.

Q And do you recall what you said in that letter?

A Yes, sir.

Q OK.

What is your recollection?

A I believe that I indicated there were indications that they were contacting our dealers and giving them erroneous information, that to the best of our knowledge, that information was not correct, and that any future providing of information to dealers should be cleared through our company.

Q Didn't you say cleared through you?

A I do not recall what the exact phrase is. When I referred to my office and the firm I certainly referred to the company and the firm, Mr. Hecht.

Q OK.

And in fact what you wanted was Schriber and Jacobson to call you and clear any information that they were going to discuss about the company with the dealers?

A I wanted them to call our company, yes.

Q You wanted them to speak to you so you could control it?

A I wanted them to speak to the company.

Q OK.

And to your knowledge, after you sent out that letter, did Schreiber and Jacobson try to get in touch with you at the company?

A Yes, I understand they did.

Q And isn't it a fact that you refused to return their telephone calls?

A I did not refuse to return the telephone calls, Mr. Hecht. I believe that I was out of town most of the time. I did not refuse to return the calls. I was shooting for a meeting.

Q But in fact you never called them back?

A I personally did not call them back.

Q Did you instruct Mr. Kean to call them back?

A Certainly.

Q You instructed Mr. Kean to call back Schreiber and Jacobson?

A We kept Mr. Kean informed of every telephone call that we received upon receipt of the telephone call.

Q But did you instruct Mr. Kean to call Mr. Schreiber or Mr. Jacobson, if they just left a message?

A Mr. Kean had general instructions of doing something about this particular problem, and it was in his hands.

Q And he told you that at some time he had called E. L. Aaron & Co. and it was all taken care of?

A At one time he had mentioned that he had spoken to them, yes.

Q And when was that?

A I do not recall the exact date but it was certainly before our meeting.

Q Now, when you are talking about "our meeting," what meeting are you referring to?

A I am referring to a meeting at Mr. Kean's office where Mr. Kean, Mr. Jacobson, Mr. Schreiber, Mr. Dorfman, Mr. Weil and myself were present.

Q OK. I'm going back. There were other meetings before then, weren't there?

MR. SCHIEREN: We didn't establish when this meeting was, your Honor.

Q When was this meeting?

A Some time in the second week of April.

Q Let's forget about that meeting for now.

Let's go back. Did you meet Mr. Jacobson or Mr. Schreiber in January 1975?

A Yes, I did.

I met with Mr. Jacobson around January 20th or 21st.

Q At that meeting, isn't it a fact that you advised Mr. Jacobson that you anticipated that dealer revenues would increase to an aggregate of $25 million in the next five years?

A I had mentioned to Mr. Jackson - he saying, "How large is the company going to be?" And I said, "In five years I hope it will be a $25 million company," referring to the services provided by the dealers.

I mentioned to Mr. Jacobson "The dealers are now doing between $5 and $12 million in business, and we certainly expect in five years to do about $25 million in business."

It was a casual conversation, Mr. Hecht, at lunchtime.

Q That is exactly my point. What you are referring to by "we" is Mat-A-Lawn and all its dealers when you are talking about $5 to $12 million in sales now, and $25 million --

A Those are the dealers of the company, that is correct. Each dealer does about an average of about $60,000 to $75,000 annually.

Q OK, and how many dealers do you have?

A There were approximately 200 dealers in the company.

Q And what were you shooting for next year?

A I wasn't shooting for any particular amount. We were in a period of consolidation and unity in the company.

Q During that meeting in January with Mr. Jacobson, did he ask you specific questions about the financial condition of the company?

A No, he did not. Not specific questions. He wanted to know what we were doing in Lawn-A-Mat and I explained to Mr. Jacobson what we were doing in Lawn-A-Mat.

Q And you were aware at that time that Mr. Jacobson had in his possession all of the financial statements of Lawn-A-Mat and its last annual report, weren't you?

A No, I was not. He didn't certainly bring it with him.

Q I didn't ask you if he brought it with him.
I said were you aware at that time?

A No, I was not aware at that time that Mr. Jacobson had any particular information, Mr. Hecht.

Q You were aware that E. L. Aaron & Co. was acting as a broker?

A I was aware that Mr. Schreiber and Mr.Jacobson were the stockbrokers for Lawn-A-Mat, and this came from information from Mr. Carl Krantz, who was a secretary-treasurer and director of the company.

Q Now, when you sent this letter out to Mr. Schreiber, do you recall when this was? Was this after the meeting with Mr. Jacobson?

A Yes, it certainly was.

Q A week after or two weeks after?

A It was about three weeks, a couple of weeks after.

Q And isn't it a fact that when Mr. Kean found out about this letter,he was very upset?

A Yes, he was.

Q And what did Mr. Kean state to you about sending out this letter?

A He mentioned to me that I should have cleared it with him and I shouldn't have sent it out because it may cause-- it may hinder the legal position of the company.

Q And isn't it a fact that you advised Mr. Kean that you thought this was important because there was mention of automobiles?

A Yes, I did. I mentioned to Mr. Kean that because I had not seen any action to stop these items, I felt that something had to be done to bring this to the attention of everybody and once and for all correct this particular situation.

Q What was the basis for your statement that what Schreiber was saying, assuming he was, anything about automobiles, that there were no such automobiles in existence?

A Because I was not informed about it, Mr. Hecht. I had no knowledge, or as a company executive vice president, or whatever the title was, I presumed I should have been informed by the company, the president or the chairman of the board,of what was being said to people about the company.

When I attended meetings of dealers, I appeared like a fool when I was confronted with things that I had absolutely no knowledge about.

Q Didn't you see Dan Dorfman at least once a week on the premises?

A Yes.

Q And didn't you ask him once about this car?

A Yes, I certainly did.

Q And what did he tell you? There was a car?

A Mr. Dorfman indicated that there is a misunderstanding, apparently, and that we are going to get together soon to discuss all these items.

Q So before you sent this letter out to Mr. Schreiber, wouldn't it have behooved you to call Mr. Dorfman?

MR. SCHIEREN: Objection, your Honor.

THE COURT: Sustained.

Why don't we take a five-minute recess.

(Recess)

MR. HECHT: Your Honor, at this time I ask the Clerk to mark as Defendant's Exhibit F a copy of a one-page letter dated February 11, 1975.

xx (Defendant's Exhibit F marked for identification)

THE COURT: Can you identify this?

THE WITNESS: Yes, your Honor.

Q Did you in fact send out that letter to Mr. Schreiber?

A Yes, Mr. Hecht, I did.

Q And you signed it?

A To the best of my recollection.

Q Now, you testified before that you sent out this letter to stop Schreiber from making certain statements about Lawn-A-Mat, isn't that correct?

A Yes.

Q OK.

Would you please read the last --

THE COURT: That is not in evidence yet.

Any objection?

MR. SCHIEREN: No objection.

xx (Defendant's Exhibit F for identification received in evidence)

Q Isn't it a fact that what you said in that letter is not that you wanted them to stop talking about Lawn-A-Mat but that you wanted them to clear the information through you beforehand?

MR. SCHIEREN: Your Honor, the letter speaks for itself.

THE COURT: The letter speaks for itself.

May I see the letter?

(Pause)

Q Isn't it a fact that Mr. Dorfman was also upset about the letter?

A Yes, he was.

Q And what did Mr. Dorfman say to you about this letter?

A If I recall a conversation, Mr. Dorfman indicated that I should have cleared with him before I wrote anything about that and that they probably misunderstood what he is saying to Mr. Schreiber and Mr. Jacobson.

Q Now, by "he was saying," you mean Mr. Dorfman?

A Yes.

Q So you knew when that letter was written that Mr. Dorfman had made certain statements to Mr. Schreiber and Mr. Jacobson?

A I did not know. I presumed, from the whole context of the subject matter, that he might have, yes.

Q And weren't those statements about the automobile?

A Yes.

Q So you knew when you wrote that letter that Mr. Dorfman had discussed that automobile with Mr. Jacobson and Mr. Schreiber?

A I believe I mentioned it on the letter, that those items are being mentioned.

Q And what did Mr. Dorfman say to you about the automobile in discussing this letter?

A I don't recall the conversation about the automobile regarding this letter, Mr. Hecht.

Q Well, at or about the time this letter was written or sent, do yourecall discussing the automobile with Mr. Dorfman?

A There were several times in which that subject matter came up.

Q I'm talking in this period now. At the time you wrote this letter, you were aware of discussions about the automobile?

A I was aware that Mr. Schreiber and Mr. Jacobson were indicating that and that apparently they had obtained that information from Mr. Dorfman.

Q How did you know that they had obtained that information from Mr. Dorfman?

A I did not know.

Q You just assumed it?

A I did not assume anything either. I'm just stating a fact, a thinking right now, Mr. Hecht, out of all the information that is being put in front of me.

Q And isn't it a fact that since the date you wrote that letter until April of 1975, almost three months later, you never bothered to visit the Stellar premises?

MR. SCHIEREN: Objection, your Honor.

THE COURT: Sustained.

Q Between February 11, 1975 and April of 1975, did you visit the United Stellar premises in Plainview, Long Island?

A I don't recall the exact date. I did visit the premises of United Stellar.

Q Was that before or after the meeting you referred to before at Mr. Kean's office in April?

MR. SCHIEREN: Your Honor, I think at this time I will object to the relevancy of this line of cross-examination, and also I will object that this is going somewhat outside the scope of direct examination.

The witness has testified on direct as to --

THE COURT: I'm wondering what the relevancy of it is.

MR. HECHT: Your Honor, if they feel it is going outside the scope --

THE COURT: I'm not worried about that. I'm asking what the relevance of it is.

MR. HECHT: I think the relevancy here, and I think it will become fairly evident,your Honor, is that certain people in the company were making statements about the car, Schreiber and Jacobsen went out and saw the car, and Mr. Erazo, who was the chief operating officer, says "I don't know anything about the car."

I think one of the problems in the securities industry, and what is really at issue here in the case, is what are the obligations on the inssuer to give full and fair disclosure to a broker-dealer and in turn what are the duties of that broker-dealer to investigate the information they receive from the company.

Because what they are charging Peter Aaron here with is thathe aided and abetted Mr. Schreiber and Mr. Jacobson. And in order to be an aider and abettor there has got to be a primary violation by the participants. And in this case the participants are Mr. Schreiber and Jacobson as to this count.

And, accordingly, I think we should know how these people at E. L. Aaron & Co. were obtaining this information, from whom they were obtaining it, and whether they had a reaonable basis to use this information in contacting dealers.

THE COURT: What's that got to do with whether or not he visited the place to see whether or not the car was there or a prototype?

MR. HECHT: Because as I understand the SEC's theory, it is that what Schreiber and Jacobson should have done is they should have taken further steps to verify statements they were making about the cars and the tractors.

THE COURT: Is that your position in connectionwith this?

MR. SCHIEREN: Our position is that, first of all, the issue at hand here in this trial, for this Court to decide at this time is whether or not, first of all, the representations that were made to the investors were true.

THE COURT: I went over this yesterday before we started, the question of whether or not Schreiber and Jacobson had made representations concerning the stock in the company, some of which were or were not false, and that's all that is involved.

And his going out to see the prototype I don't see has a darned thing to do with it.

MR. SCHIEREN: Exactly.

MR. HECHT: Your Honor, are they willing to stipulate that the representations made by Schreiber and Jacobseon were not false and misleading?

THE COURT: No, they are not. That is the heart of this case.

MR. HECHT: And our position is that Schreiber and Jacobson believed that they were making truthful statements.

THE COURT: Fine.

They are not going to prove it through him.

MR. SCHIEREN: The question of what they believed is not at issue here either. The question is:

Were the statements true?

THE COURT: True or false or misleading. That's all that is involved.

I think youare going far afield here.

MR. HECHT: I would like to maybe phrase it another way.

Brokerage houses only have one way of obtaining information, really --

THE COURT: Did they get any information from him, from the witness on the stand?

MR. HECHT: They got the letter and they were supposed to clear it through him. And he has stated under oath that in his opinion--

THE COURT: I don't believe it has any relevance.

We are going to take more time arguing about it. I rule that this has no relevance.

Next question.

(continued on next page)

Q With respect to the Rainbird sprinkler that you testified to before, you said that the company did not buy Rainbird Sprinkler.

Let's do this over again because I don't have any exact notes.

What is your recollection of any representations you made to either Jacobson or Schreiber relating to the Rainbird Sprinklers?

A I made no representations regarding Rainbird Sprinklers. In my conversation with Mr. Jacobson, if I remember correctly, I indicated that it was in the interest of the company eventually to handle other products associated with the industry, with the lawn service industry that the company was engaged in, and certainly sprinklers, such as Rainbird, would be products that we would consider; that there were two dealers in the company, one named Danny Goldstein and one named Kenneth White in Massachusetts, who were already utilizing these sprinklers in addition to the lawn services that they were providing.

Q Okay. Do you recall the following questions and the following answers at your prior examination before trial, Page 49:

"Q Do you recall what Mr. Jacobson said to you and you to Mr. Jacobson at that meeting?"

Do you recall that question? I'm talking about the January 20th meeting.

A No. Please refresh it for me, Mr. Hecht. I do not recall it.

Q Do you recall me asking you this question in your examination:

"Q Do you recall what Mr. Jacobson said to you and you to Mr. Jacobson in that meeting?"

That was the question I asked you.

THE COURT: Now what is the answer?

Q [Continuing:] And the answer:

"A He indicated that Mr. Dorfman had requested him to get general information about the business activities of the company and the new marketing effort that we were in the process of incorporating into the firm."

Was that your answer ?

A That was my answer, yes, sir.

Q [Reading:]

"Q What did you state in response?"

And was this your answer:

"A I stated to him that we were in the process of meeting and finding out all of the problems that our dealers had in the field; that we felt there was a real opportunity for the dealers to improve their business once they had received proper training; that and as far as products were concerned, the company would probably maintain the same products that we had, but in the future we will seek out new products, such as a particular product from a company called Rainbird in California."

Was that your response to that?

A That was my response.

Q Okay. The next question was:

"Q Was that a sprinkler?"

Was this your answer:

"A Something."?

A No, that was not a complete answer.

Q Okay. The next question was:

"Q A pulsating sprinkler?"

And your answer was:

"A If this is true -- it was a sprinkler or something related to that."

A Yes.

Q So you did discuss the Rainbird Sprinkler with Mr. Jacobson.

A I indicated before that I have mentioned Rainbird, you know, products such as Rainbird Sprinklers, yes.

Q And isn't it a fact that at the time your company was interested in obtaining an exclusive distributorship for that product?

A No, that is not so.

Q Did the company at any time attempt to obtain an exclusive distributorship, to your knowledge, for that product?

A Not to my knowledge, Mr. Hecht.

Q Was it your impression that Mr. Jacobson and Mr. Schrieber were acting on behalf of Mr. Dorfman?

MR. SCHIEREN: Objection,your Honor.

THE COURT: Yes. Sustained.

Q To your knowledge, was there any relationship between Dan Dorfman, Mr. Jacobson and Mr. Schreiber?

A I was introduced to the name of Mr. Jacobson and Schreiber by Mr. Krantz , and that was the extent of my knowledge at that particular time.

Q Were you aware, at the time that you wrote this letter, which has been submitted as Defendant's Exhibit F, that the dealers were aware of this automobile?

A No, I was not aware that the dealers were aware of the automobile. I became aware that some dealers had been aware of an automobile for some time, many months later.

Q You were the chief operating officer, even though you were the vice president. At that time, when you came with the company, you were the chief operating officer.

A Yes.

Q And wasn't your primary responsibilities coordination with the dealers and the parent company?

A My primary coordination at that particular point was to satisfy the requirements that the company had in order to exist, namely its very poor financial condition, lack of marketing, problems with dealers not buying products from the company, and other items, especially legal problems that the company had.

Q Now,you referred before, in your testimony on cross-examination, to a meeting in April.

A Yes, I did.

Q Who was present at that meeting?

A If my memory serves me correct, Mr. Kean, Mr. Dorfman, Mr. Jacobson, Mr. Schreiber, Mr Weil and myself.

Q Who was Mr. Weil?

A An attorney that worked in Mr. Kean's office.

Q And do you recall who called the meeting, or who set up the meeting?

A We had been calling that meeting for some time. I would say that the meeting was set up between Mr. Kean and Miss Lane, or with the corporation or both.

Q Do you recall what the stated purpose of the meeting was?

A To clarify the statements that both Mr. Jacobson and Schreiber were making to our dealers.

Q And at this meeting what did Mr. Dorfman say about the car?

A Mr. Dorfman indicated that Lawn-A-Mat was not making the car but he was thinking of building a car, he was thinking of building a car, and it was not quite what he had said to Schreiber and Jacobson, and that he was not lying because he was thinking of making a car.

Q And what was the reaction or the response of either Mr. Jacobson or Mr. Schreiber?

A I would say that they were rather upset to hear an answer like that.

Q And didn't they state at that meeting, "Then what have we been seeing out in Plainview?"?

A Yes. I recall something like that now .

Q Okay. And what did they say about what they saw about in Plainview?

A They indicated that they had seen a prototype of an automobile in Plainview.

Q And what did Mr. Dorfman say in response?

A He invited us to come over to see the prototype of the automobile in Plainview.

Q And what did Mr. Kean say about all of this?

A If I recall correctly, Mr. Kean asked Mr. Dorfman if this was the automobile that he had pictures of from that Chicago company. I don't know what Chicago company but a Chicago company.

Q Did Mr. Dorfman at that time also discuss they had a facility out in Kansas City which would produce the fibreglass body?

A I don't know if that subject was particularly discussed at that meeting, Mr. Hecht.

Q Isn't it fair to state that you weren't invited by Mr. Dorfman to come out there, he demanded that you people come out there and you should have come out there long ago if you had any questions?

MR. SCHIEREN: Objection.

THE COURT: No. I'll permit it.

A I don't know the degree of, you know, what "demand" is in this case. But he did request that we come out to see the automobile.

Q What did Mr. Kean say throughout this?

A He said, well, again, you know "This is the automobile of the pictures that I have on my files." And then he said, "Well, maybe we should all go out and see what is happening in Plainview."

Q And Mr. Kean was the lawyer for the company?

A Yes.

Q And was it your understanding that he was the SEC Compliance Director?

A As far as I'm concerned, he was. I had no experience in SEC matters or stock matters when I was hired, and it was made clear to Mr. Kean that I was not.

Q Okay. Did you ask Mr. Kean why he hadn't gone out there before?

A No, I did not.

Q Do you recall Mr. Schreiber making a statement directly to Mr. Dorfman , "Mr. Dorfman, you told us that Lawn-A-Mat was in the process of building a car, and so did Mr. Jacobson."?

A Yes.

Q When did you finally go out and visit this facility?

A I would say a week or two weeks after that meeting.

Q And who went with you?

A Mr. Kean, Mr. Dorfman, Mr. Discount, myself, I think Mr. Lore was there, Mr. Lore?

Q Was Pat Lore an officer of Lawn-A-Mat?

A He had been an officer and director of the firm for many years.

Q Do you recall any statements at that meeting about how the automobile would be funded?

A Please clarify the meeting, Mr. Hecht.

Q The meeting at Mr. Kean's office.

A I believe that the subject of the tractor was introduced at that particular meeting, a tractor that was going to be built by United Stellar similar to the Economy Tractor which is available in the industry, and the sale of these tractors would probably fund the building of the automobile.

Q And you were aware that Lawn-A-Mat had an option ot purchase United Stellar?

A Yes. Lawn-A-Mat had exercised that option in 1974.

Q Is Economy the brand name of a particular type of tractor?

A Yes, it is.

Q And was that kind of tractor used by the Lawn-A-Mat dealers?

A I would say that most Lawn-A-Mat dealers utilized the Economy Tractors.

Q Do you know if either Mr. Schreiber or Mr. Jacobson accompanied you on your first visit to the premises out in Plainview?

A I did not state that it was my first visit. But on that particular visit, I do not believe so.

Q When did you visit the premises of Plainview before, if that wasn't your first visit?

A I do not recall if that was the first or the second visit, as I mentioned before, Mr. Hecht. I just want to clarify the record.

Q Do you recall what you saw out at the premises?

A Yes, pretty much. It is a fairly large plant. I would say that it was rather inactive. There were a few workers in the back of the plant.

Q About 27 of them?

MR. SCHIEREN: If I may, I think we are right back where we started again.

THE COURT: Yes. Sustained.

MR.HECHT: Your Honor, I think he would be testifying to exactly what he saw there.

THE COURT: No.

Q After that meeting of April 13, 1975, did you receive any calls personally of dealers who were commenting upon receiving calls from Schreiber or Jacobson?

A Mr. Hecht, most of the calls directed to me in the company were not handled by me personally. I was fifty to 75 per cent in the field.

Q I just want to know what you received. So in fact you personally received no calls from any of your franchisees or distributors or dealers after April 13, 1975 relating to the activities of Schreiber or Jacobson?

A My office did. I personally did not.

Q Didn't there come a time when you attempted to buy out control of Lawn-A-Mat from Mr. Dorfman?

MR. SCHIEREN: Objection,your Honor.

THE COURT: Sustained.

MR. HECHT: Your Honor, it is irrelevant to the issues.

THE COURT: Yes. It has nothing to do with the issues in this proceeding.

MR. HECHT: Can I give a proffer of why I think this area is relevant?

THE COURT: Yes.

MR. HECHT: I think we have a situation here where one element in the management of the company was trying to depress the stock, for personal reasons, that they wanted to take control, and the other element in management, which had a substantial block of stock, were doing everything in their power, for their own selfish reasons, to increase the price of the stock. And what happened, unfortunately, is E. L. Aaron was caught in the middle because they were used, in effect, by both groups, unknowingly.

I think this can explain Mr. Erazo's actions, why he was uncooperative and did not return any calls, and things like that, in the company.

THE COURT: Does it make any difference? It doesn't make any difference why he didn't call anybody back. What has this got to do with the issues here?

MR. HECHT: I think one of the issues, your Honor, is what is the due diligence of the broker to check out facts, and our position is that Jacobson and Schreiber, after being advised of this by Dorfman, as the proof will show, went out and physically checked out every statement that he made, and then , because of Mr. Erazo's letter, which is Exhibit F, they called Mr. Erazo to discuss it with him, and they have already introduced witnesses who were dealers, who were contacted after that letter, Mr. Dudics, Mr. Bergquist, by Mr. Schreiber or Mr. Jacobson, and the prupose, I presume, of putting those witnesses on the stand, was the allegedly false and misleading statements made by Schreiber or Jacobson.

My purpose here is that if the broker is getting this information from the issuer and has no reason to doubt its veracity or its truth and takes reasonable steps to check out such information, he has done all he can , and if someone at the company is pulling a fast one on him and he is very clever, there is nothing that the broker can do about it.

THE COURT: Did he have any conversations with the broker? That is all that is involved.

MR. HECHT: Who had any conversations?

THE COURT: The witness.

MR. HECHT: We went through one, the January 20th meeting. I have gone through the April 13th, and I think he testified subsequent to that --

THE COURT: You are back to his investigating complaint and so forth.

If you have something with respect to his conversations or talking with Aaron, why, sure, that is relevant.

MR. HECHT: Let me just clarify one thing.

BY MR. HECHT:

Q And when you testified before, when you were at the office of Mr. Kean and he called Aaron and Company, you didn't know the person he was speaking to at Aaron & Company?

A No, I did not.

Q Did they announce their name?

A I do not recall, Mr. Hecht.

Q Now, with respect to the chemical purchases by the company, do you recall --

MR. HECHT: Let me withdraw that question, your Honor.

Q Now, as the chief operating officer of Aaron & Company, did you review its filings with the Securities and Exchange Commission that were filed while you were its chief operating officer?

A The filings were reviewed by myself, by the auditors of the firm, of course, by Mr. Kean and by Mr. Dorfman.

Q And isn't it a fact that you suggested to the company that they retain a Mr. Essner to do this kind of work because you didn't trust the lawyer for the company?

MR. SCHIEREN: Objection, your Honor, to the form of the question.

THE COURT: Yes, sustained.

Q Do you know what a Form 10K is?

A Yes, I do.

Q Do you know who prepared the form 10K for Lawn-A-Mat for the fiscal year ended in 1973?

A I may not be correct, but I would say that it is a firm called Shields & Haas.

Q Is that an accounting firm?

A This is the accounting firm, yes.

Q Does the 10K have other items in there besides the financial statements?

A Yes. I presume it has its legal aspects that is to be prepared by the counsel of the firm.

Q And who prepared the other aspects of the form for the year 1973, if you know?

A I do not know.

Q How about for the 1974 fiscal year?

A The items for 1974 were prepared by both Mr. Kean and Mr. -- and Ackerman & Company, the auditor for the company.

Q So that the auditors prepared what you would normally call the financial statements?

A That is right.

Q And Mr. Ackerman --

A No, the name of the company is Ackerman & Company. Mr. Murray Spirgel is the senior accountant-auditor for the firm.

Q And they did the financial statements portion, to your knowledge?

A Yes.

Q And the other portion was done by Mr. Kean?

A The legal aspect was prepared by Mr. Kean and reviewed with the auditors of the firm.

Q And did you, during that year, make any suggestion about having someone else prepare the filings with the SEC to the board of directors ?

A I do not recall making any suggestions to have any other person do the filings during that particular period of time.

Q Did you review the 10K for Lawn-A-Mat that was filed with the SEC for 1974 fiscal year?

A Yes, I read it.

Q Did anything come to your attention when you read that report that was improper?

MR. SCHIEREN: I object. I don't see the relevance of that at all.

THE COURT: No.

MR. HECHT: It goes to the financial statements, what was available to the public to look at and the brokers.

MR. SCHIEREN: The Commission will offer the financial statements. We have certified copies of all the financial statements.

MR. HECHT: Fine, offer the certified 10K. That is what we had agreed to. Why don't you offer it because I would like to refer to it. You have the certified copy.

THE COURT: How much longer are you going to be with this witness?

MR. HECHT: I would say five to ten more minutes, your Honor.

THE COURT: And redirect ?

MR. SCHIEREN: Very brief.

THE COURT: Well, let's adjourn for lunch until two o'clock. Be back at two.

MR. HECHT: Thank you, your Honor.

[Luncheon recess.]

AFTERNOON SESSION

[2:15 p.m.]

FERNANDO ERAZO, resumed.

CROSS-EXAMINATION

BY MR. HECHT: [Continued:]

Q Mr. Erazo, getting back to your prior examination before trial and particularly the SEC, Page 125, 124 at the bottom, the following questions were asked you:

"How would you classify what you saw at the plant?

"The chassis, you mean?

"A [And this is your recollection:] I already did."

Is that your answer?

A I believe that was my second answer.

Q The next question:

"Would you classify it as a prototype or working production model?

"A Neither. It was an already produced car sitting there, spending time."

Was that your answer?

A Spending time? I believe not, Mr. Hecht. I don't know what that means.

MR. SCHIEREN: Your Honor, I object, relevancy.

THE COURT: You are back into an area that I don't think you are permitted to go into, Mr. Hecht.

MR. HECHT: Your Honor, he testified before that there was no car and in his examination before trial he testified there was a car.

THE COURT: Whether there was a car or not, as far as he knows, whether there was a car or not --

MR. SCHIEREN: Was Lawn-A-Mat making a car? That is the question he is asked and that is what he answered. Whether there was a car at Stellar is irrelevant to this issue.

THE COURT: How do you get into the problem of Schreiber and Jacobson trying to get some information from people on the inside?

MR. HECHT: But they are not being charged with the use of inside information. They are being charged, I think, with making false statements to the public, not inside information.

THE COURT: What do you have to say to that?

MR. SCHIEREN: That is correct.

THE COURT: All right. Why didn't you?

MR. SCHIEREN: There was no inside information because it wasn't true.

MR. HECHT: We are saying there was a car there.

They are saying, well, it may not have been produced by Lawn-A-Mat or it wasn't the intention, and we say it was the intention.

THE COURT: Let's proceed.

BY MR. HECHT:

Q Mr. Erazo, isn't it a fact that while you were [illegible]d as the president of Lawn-A-Mat you attem[illegible] set up a chemical company without disclosing it to the board of directors?

MR. SCHIEREN: Your Honor, objection.

THE COURT: Is this going to the question of credibility?

MR. HECHT: Yes.

THE COURT: For that limited purpose I will take it.

A I don't believe that is so, Mr. Hecht.

Q Isn't it a fact you set up a chemical company where you are the president and Mr. Bergquist, who testified before, is the vice president?

A Absolutely untrue.

Q YOu haven't ever set up a chemical company?

A Not while I was the president of Lawn-A-Mat or vice presidentor employed by Lawn-A-Mat whatsoever.

Q Is there one set up now?

A There is a company called Heritage House Products that has been in existence for fifteen years which was purchased on July 29th of this year.

Q And you had no plans to purchase it before this year?

A Before this year? I was never aware of the name of Heritage House Products. It is a consumer package line.

Q Isn't it a fact that you are now being sued by Lawn-A-Mat along with Mr. Refold and Stenerger for a conspiracy relating to the attempted gifting of Mr. Dorfman of the stock to the company if the dealers will buy or would have bought substantial shares to refinance the company?

MR. SCHIEREN: Objection as to the form of the question.

THE COURT: Yes.

MR. HECHT: I will break it down.

THE COURT: Yes.

MR. HECHT: Very simply.

Q Didn't there come a time in 1976 when you retained the firm of Refold & Steinerger?

A Yes, we did, the company did.

Q At that time was Mr. Dorfman the chairman of the board?

A Yes, he was.

Q Did you ever get approval for their retention from Mr. Dorfman?

A I don't believe that the bylaws of the corporation require approval.

THE COURT: No. Did you ever get it?

THE WITNESS: No, I did not. Sorry.

MR. SCHIEREN: Are we talking about 1976 now?

MR. HECHT: '75.

MR. SCHIEREN: The question was '76.

THE COURT: The question was '76.

MR. HECHT: I will rephrase it.

Q In 1975, prior to August of 1975, if I ask the same questions, using '75 --

A No, I did not obtain approval from Mr. Dan Dorfman.

Q In fact, Lawn-A-Mat never held a board of directors meeting where this was ever discussed?

A As I said before, it was not required, Mr. Hecht, for a board meeting to hire attorneys.

Q No, that wasn't the question. The fact was, did the board of directors ever hold a meeting and discuss this at a directors' meeting?

A Discuss what, Mr. Hecht?

Q The retention or payment of $5,000 to Refold & Steinerger?

A The persons attending that meeting where this subject was discussed were Mr. Pat Lore, a director of the company, Mr. Stanley Essner, the vice president of the company, myself and Miss Lane. I believe -- I don't remember if Mrs. Maniatis was there.

Q Isn't it a fact that Mr. Dorfman was never notified of this meeting?

A I do not know if Mr. Dorfman was notified of the meeting. I know Mr. Dorfman was not at the meeting. I had just come back from the West Coast.

Q And isn't it true that at the time you were soliciting dealers of Lawn-A-Mat to purchase treasury stock to refinance the company?

A That is not true.

Q And isn't it true that one of the conditions that those dealers were to purchase was that Mr. Dorfman was to give his 600,000 shares of stock to you?

A That is not true either. That is absolutely untrue.

MR. HECHT: Okay, your Honor. Let me get that out.

Your Honor, I would like the Court Reporter to mark this as Defendant's Exhibit G.

THE COURT: No, the Court Clerk will mark it.

MR. HECHT: Court Clerk, excuse me, to mark this as Defendant's Exhibit G which is a photostatic copy of a three-page letter dated August 7, 1975, from the law offices of Refold & Steinerger to Lawn-A-Mat Chemical & Equipment Corp.

[Defendant's Exhibit G marked for identification.]

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MR. HECHT: Let the record reflect that I am handing the witness a copy of the letter which has been previously marked as Exhibit G.

Q Have you read the letter?

A Yes. I recall that letter.

Q Is that letter an accurate summary of the meetings referred to therein on August 4 and August 5, 1975?

A I do not know what went on in the meetings, Mr. Hecht. I was not present at the meetings of the attorneys with either Mr. Dorfman or Mr. Kean or Ackerman & Co. I do not know what went on at the meetings.

When I received this letter, it was the first time that I had read the items contained on this letter.

Q Well, the question is not whether you read them for the first time--

THE COURT: He says he wasn't present at the meetings. How can he tell us what occurred at the meetings when he wasn't present at them?

MR. HECHT: OK.

Q Did you receive the original of this letter as president of Lawn-A-Mat?

A The company received the letter, yes, sir.

Q Did you receive it?

A It was furnished to me through the regular mail. It came to the company.

Q Does this look like a true copy of the letter?

A Yes, it does. It certainly does.

MR. HECHT: Your Honor, at this time I'd like to submit it as Defendant's Exhibit G.

MR. SCHIEREN: I object to relevancy.

THE COURT: Sustained.

It can't be a record kept in the regular course of business of Lawn-A-Mat. I can't see what basis --

MR. SCHIEREN: Just assuming it was inter-corporate filing, what does it have to do with the issues at hand?

MR. HECHT: We are going into credibility where he said this wasn't happening and here's a letter--

THE COURT: He wasn't at the meetings that took place on August 4th and 5th.

MR. HECHT: OK.

Q Did you discuss with the law firm of Refold & Steinerger certain problems, internal problems of the company?

A The attorneys were hired to help us with a view from the outside, to help us look at the litigation that we had in the company which was extremely extensive and other problems that we had internally in the company and to help us resolve those problems. I had had no way of resolving them until that particular time. That was the function, the reason, and stated to them as they mention here on this letter.

Q Didn't they say in this letter, there is a statement in this letter that "The touchstone of this plan was the acquisition by Mr. Erazo" --

THE COURT: Why do you refer to something not inevidence?

MR. HECHT: OK.

Q Wasn't part of this plan to straighten out the company that Mr. Dorfman was to get rid of all his shares to you?

MR. SCHIEREN: What plan? What are we talking about?

MR. HECHT: He is talking about reorganizing the company internally.

THE WITNESS: I have not spoken about that. I have spoken about the attorneys investigating and studying the legal problems that we had in relation to our business.

Q And did you discuss with those attorneys the acquisition by you of Mr. Dorfman's stock?

A Our discussions with the attorneys involved, yes, the controlling, the effective control of the corporation via stock proxy or stock in another way.

When the attorneys spoke to Ackerman & Co., they were advised by our auditors, Mr. Murray Spirgel, specifically, that the company was not in the position of acquiring, if they were successful in negotiating with Mr. Dorfman, any of Mr. Dorfman's stock because of the financial position of the company, and they suggested that they put a name of a responsible individual to represent the company in a particular acquisition should they be successful in it.

It was strictly done for the company, sir.

Q But they used your name?

A Yes, apparently they did use my name.

Q Did you consent to the use of your name?

A As I said, the attorneys had suggested-- Ackerman & Co. had suggested that my name, the name of a responsible individual -- I was the president of the company at that particular time.

Q And wasn't part of the plan that you were to be granted what was called a call-option to purchase Mr. Dorfman's stock at varying prices?

A I was not familiar with the term until I read it on this letter, Mr. Hecht.

Q And you never discussed the terms upon which you were to purchase Mr. Dorfman's stock?

A I do not recall the terms. I do recall some of the items mentioned on conversation with the attorneys. I don't know the terms. I did not attend those meetings.

Q Did you discuss with Refold & Steinerger what went on at those meetings?

A We had a very brief discussion after they had met with Mr. Milton Kean, where they indicated that they had been treated like children and they saw no possibility of conducting any farther negotiations of finances with the company, chairman and counsel.

Q Do you recall a meeting out in Wisconsin, Kenosha, Wisconsin, in July or August 1975 attended by a number of dealers?

A Yes, I do. It was attended by a number of distributors.

Q Isn't it a fact that at that meeting you told these dealers about your plan to get rid of Mr. Dorfman and you were taking over control of the stock?

A No, sir.

MR. SCHIEREN: I object.

A Untrue.

Q Did you discuss anything with these dealers about them buying stock in the company?

A We discussed the financial problems that the company had. They are part and parcel of the company, and I was seeking their help. They indicated their interest, if the company ever had any private placements, to have them considered for private placing, they would be interested in investing in Lawn-A-Mat.

That was the extent of my conversation with them, and prior to my going to that meeting, I had discussed this with Mr. Kean.

Q Wasn't it also discussed that they would only put this money into Lawn-A-Mat if Mr. Dorfman's equity interest was eliminated?

A What they stated, sir, I don't remember. It may have eben their own thinking at that particular time. It was not my official request or answer or comment about it.

Q I'm not asking what your official request or comment is. Wasn't it discussed by them with you that a condition of their investing money in Lawn-A-Mat was the removal of Mr. Dorfman totally from the management of the company?

A I do not know if that statement is accurate, Mr. Hecht. I will say that I am familiar with suggestions such as that. I do not recall exactly when, where or with whom. I don't recall the specific conversation about it.

Q And you understand that when you buy stock, if you are the purchaser, the cheapest price you can get it, the better, don't you?

A I believe anybody can understand that, Mr. Hecht.

MR. HECHT: I have no further questions.

MR. SCHIEREN: I have a few questions on redirect.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. SCHIEREN:

Q Mr. Erazo, is there a difference between the earnings of the dealers of Lawn-A-Mat and the earnings of Lawn-A-Mat itself, the parent company?

A Certainly. Each dealer has a business of his own. He has his own costs, his own finances, and capitalization and so on. And he may run a business profitably or unprofitably independently of how the company runs its business.

Q Well, can the dealers be profitable at the same time the parent company is not profitable?

A Certainly.

Q Can the dealers exist if Lawn-A-Mat were in bankruptcy, the parent company were in bankruptcy?

A You mean a reorganization, sir?

Q Yes.

A Well, I believe the company is now under Chapter XI, and the dealers are still functioning as dealers, to the best of my knowledge.

Q Can the dealers buy products from other entities other than Lawn-A-Mat?

A I would say that they can.

Q I believe on cross-examination, Mr. Erazo, you testified that Lawn-A-Mat exercised an option with respect to Stellar Industries in 1974.

What do you mean by "exercised an option" in 1974?

A Well, I would say that the company entered into an agreement with a company in Chicago, I believe, called Trident Tool, who put up about $300,000 to buy the option, or the position, of Republic Corporation in United Stellar Corporation. I don't believe I meant "exercise the option."

Q That is the point I wanted to make. When you said "exercise," you meant acquire?

A Strictly a semantics problem.

Q Do you know if that option with respect to Steller Industries was ever in fact exercised by Lawn-A-Mat?

A Not while I was there.

Q Mr. Erazo, back in that April meeting, at which Mr. Jacobson and Mr. Schreiber were present and Mr. Dorfman as well, I believe you testified that Mr. Dorfman said something with respect to a car.

What did Mr. Dorfman say with respect to that car, again?

A I believe he said that he was not lying because he was thinking of building a car.

Q Did Mr. Dorfman say Lawn-A-Mat is building a car?

A No, no. He was building a car.

Q He personally?

A He was thinking of building a car, he, Mr. Dorfman.

MR. SCHIEREN: Thank you.

No further questions.

THE COURT: Anything further?

MR.HECHT: No,your Honor.

THE COURT: You may step down.

(Witness excused)

MR. SCHIEREN: The Commission calls as its next witness Mr. Lary Cianchetta.

LAWRENCE CIANCHETTA, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHIEREN:

Q Mr. Cianchetta, are you known by any other name?

A Yes. Larry Powers.

Q Would you prefer that I address you as Mr. Powers?

A OK.

Q Mr. Powers, are you currently employed?

A Yes.

Q By whom and in what capacity?

A Brooks Hamburger Securities, as a registered representative.

MR. HECHT: Pardon me. I can't hear him.

THE WITNESS: Brooks Hamburger Securities, registered rep, stockbroker..

Q Registered representative?

A Registered representative.

Q For how long have you been so employed?

A Approximately a year and a half.

Q And prior to your employment at Brooks

Hamburger, how were you employed?

A I was employed at E. L. Aaron as a registered representative.

Q And for how long were you employed at E. L. Aaron & Co.?

A Approximately a year and a half.

Q Mr. Powers, are you a respondent in any NASD proceeding?

A Yes.

Q What are you charged with in that action?

A Making false and misleading statements concerning the stock of Cordiodynamics.

MR. HECHT: I would like to object to this line of questioning; (a) he is impeaching his own witness.

THE COURT: He is bringing out on his direct case the fact that he is under some kind of a charge, and that is perfectly permissible. He is not impeaching his own witness.

Q What is the status of that matter?

A Nothing is--

Q It is still pending?

A It is pending, yes.

Q Has the SEC made any promises in connection with that matter?

A No.

Q Now, Mr. Powers, were you employed at E. L. Aaron & Co. during the period from August of 1974 through September of 1975?

A Yes.

Q How did you come to be employed by E. L. Aaron & Co.?

A I was introduced into the firm by John Forma.

Q Did Mr. Forma introduce you to someone?

A Yes, he did.

Q Qho?

A Peter Aaron.

Q What happened after Mr. Forma introduced you to Peter Aaron?

A I was hired and started briefly after.

Q Did you discuss your employment with Mr. Aaron?

A Yes.

Q What did you discuss with Mr. Aaron?

A Commission rates, various firm procedures.

Q And who informed you that you were in fact hired by E. L. Aaron & Co.?

A Peter Aaron.

Q What were your duties at E. L. Aaron & Co.?

A I sold stock to clients.

Q Did you do anything else?

A I traded-- made markets in a few stocks.

Q Were you supervised by anybody while you were working at E. L. Aaron & Co.?

A Yes.

Q Who?

A Peter Aaron.

Q What did Edward Aaron do, if you know?

A Mostly the executions of orders.

Q Did he do anything else?

A He made markets in the firm's securities.

Q Traded stocks?

A Traded stocks.

Q Where was Eddie Aaron during the business hours?

A In the trading room.

Q Was he always in the trading room?

A Most of the time.

Q Now, Mr. Powers, did you ever have any problems with respect to your duties as an employee at E. L. Aaron & Co.?

A Problems? Well, sometimes cl[illegible] didn't pay for stocks on settlement date.

Q What happened in those instances?

A I would consider that a problem.

Q What happened when a client didn't pay?

A He would get notified and then try to make- try to get them to pay it.

Q How did you get notified?

A Someone would come around with a list of cl[illegible] that were late in their payment.

Q Who?

A Peter Aaron.

Q What would happen after Mr. Aaron informed you that a customer was late in paying?

A I would try to get the client on the phone and get them to get the money in as soon as possible.

Q Did you ever have any other problems as an employee at E. L. Aaron & Co.?

A Not that I can remember.

Q Did you ever have any problems with respect to any 144 stock?

A Occasionally we would run across clients that had 144 stock.

Q And what would you do in those instances?

A I would bring it to Mr. Aaron's attention.

Q Which Mr. Aaron?

A Peter Aaron.

Q And what would happen then?

A Well, he would handle the ramifications of the legal aspects of the 144 stock.

Q Did you have any other contact with Peter Aaron in your capacity as representative in Aaon & Co.?

A Well, he would come around and let you know your monthly production figures, let you know how you stood in respect to the other registered representatives' production.

Q Anything else?

A He was trying to get you to make the most of yourself.

Not that I can remember.

Q Were there any sales meetings?

A Yes. We had meetings. Usually at the close of the market hours, twice a month, approximately. No set pattern.

Q What was discussed at these meetings?

A Various procedures, sales techniques. They were like pep talks.

Q Who ran these meetings?

A Peter Aaron.

Q Did Edward Aaron attend those meetings?

A Yes.

Q Did he participate?

A At times.

Q Who else attended these meetings?

A Most of the registered representatives at E. L. Aaron.

Q Do you recall any names?

A Well, do you want me to list the names?

Q If you can recall the names.

A Harriet Stewart, Rick Deutsch, Jack Elair, John Forma, Fpil Shapiro, Ed Vogel, Sam Jacobs, Gene Marisio.

Q What about Larry Cohen?

A I believe he was there. I believe he attended a few.

Q What about Tep Lipton, if you can recall?

A I think so. Yes. They were held in the back room, and that's where he worked. It is possible that he had been there.

Q Did you ever have any other contact with Mr. Peter Aaron?

A Not that I can remember.

Q Did he ever give you names of people?

A Yes. He gave me leads of possible clients, stockholder lists.

Q Did you everreceive any cash from Peter Aaron?

A Yes, I did.

Q How much?

A It was in the neighborhood of $300.

Q Can you recall what the purpose of that was?

A It was a bonus.

Q A bonus for what?

A For selling stock.

Q Based on your experience as an employee at Aaron & Co., who ran the firm?

MR. HECHT: Objection to the form of the question.

THE COURT: Sustained.

MR. SCHIEREN: I believe under Rule 701 it is proper.

THE COURT: Yes. I believe it is. I'm just reacting to my old instincts. It is admissible.

Q I'll repeat the question.

Based on your experience as an employee at E. L. Aaron & Co., who ran the firm?

A I would say it was Peter Aaron.

MR. SCHIEREN: I have no further questions.

MR. HECHT: I have some questions, your Honor.

THE COURT: All right, proceed.

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CROSS-EXAMINATION

BY MR. HECHT:

Q Mr. Powers, isn't it a fact that the NASD has refused to resolve this matter until you furnish testimony in this case?

A No. That's not true.

Q Do you know why the matter with the NASD is not concluded yet?

A No, I don't.

Q Are you opposing that? Are you represented by counsel?

A Yes.

Q Isn't it a fact that you never saw Peter Aaron fire anyone at E. L. Aaron & Co.?

A I never saw him fire anyone, no.

Q And as a matter of fact, he attempted to fire you and was overruled, wasn't he?

A I don't know anything about that.

Q I am going to go back and refresh your recollection.

Did you have a customer by the name of Mr. Guyer while you were employed at E. L. Aaron & Co.?

A No, I didn't.

Q Did you know the name Mr. Guyer?

A Yes.

Q Okay. Was he in one of those stocks that you made a market in?

MR. SCHIEREN: Objection to the form of the question.

MR. HECHT: He stated that he not only retailed but that he acted -- he made his own market in stocks.

THE COURT: Is that so?

MR. SCHIEREN: But you said was he in one of those stocks.

A I believe his wife owned some stock.

Q And what was the name of the company?

A I really don't know. They had a lot of trades in the account. It could have been any one of fifty stocks.

Q Could it have been Union Petrochemical?

A No, it wasn't that one. I didn't make a market in that stock.

Q Okay. And isn't it a fact that you were caught diverting approximately $300 from Mr. Guyer's nominee account?

A No.

MR. SCHIEREN: Objection, your Honor.

Do you have specific knowledge of that?

THE COURT: The witness has denied it.

Q One of the stocks that you are named in in the NASD proceeding is Union Petrochemical, isn't it?

A I believe so, yes.

Q And isn't it a fact that you were the one who paid for an ad in the Wall Street Transcript which is the basis for that action?

A It is not true.

Q That's what is alleged by the NASD?

A No, it is not.

Q And isn't it a fact that you tried to get a job with British American?

A It is not true.

Q You never filed an application there?

A No, I didn't.

MR. HECHT: May I take a two-minute recess?

[Pause.]

Q Did you ever speak to John Forma directly about a job at British American?

A No, I didn't.

Q How many hours a week did you spend at E. L. Aaron?

A About 35.

Q Who was the president of E. L. Aaron?

A Ed Aaron.

Q Who was the registered principal at the main office of E. L. Aaron?

A I would say Ed Aaron.

Q Do you know who the officers of E. L. Aaron & Co. were, other officers?

A No, I do not.

Q Do you know who the directors of E. L. Aaron & Co. were?

A No, I do not.

Q Now, prior hereto you gave testimony to the SEC, didn't you?

A Yes.

Q And in a private investigation?

A Yes.

Q Was that on October 16, 1975?

A I don't know the date.

Q Was I present at that examination?

A No.

Q Were you represented by counsel at that examination?

A Yes.

Q And that counsel was other than me?

A Yes.

Q Do you recall giving testimony that you felt there were favorites at the firm and that you weren't one of the favorites?

A I don't recall that.

Q I'm reading from Page 24 the first question. I guess the questioner here was John Tully:

"Q Let's say they call teh company, they obtain the shareholders' list.

"A Right."

Is that your answer?

A Yes.

Q Isn't it a fact that E. L. Aaron & Co. only obtained a shareholder list with the permission of the company?

A I don't know what my answer was at the particular time.

Q I am now asking you a separate question right now, to clarify this. Isn't it a fact that E. L. Aaron would only obtain the shareholders list with the permission of the issuer?

A I don't know if that's true.

Q Didn't you make a market in Wall securities?

A Wall Associates, yes.

Q And didn't in fact Peter Aaron tell you you had to obtain the company's permission to obtain the stockholders list?

A Yes, I believe so.

Q And didn't you in fact obtain that permission?

A Did I obtain the list?

Q No. Did you obtain the company's permission?

A Yes.

Q And did you obtain the stockholders list?

A Yes.

Q And, to your knowledge, did the company always follow this procedure with respect to any stockholders list it obtained?

A That's almost the truth. There are other ways of getting stockholder lists.

Q But didn't E. L. Aaron only get it with the company's permission?

A No, that's not true.

Q The next question was:

"Q How would the shareholder lists be distributed to the representatives?

"A It wasn't distributed. They had favorites in there. Some of the more productive boys would get what is known as the better lists. "

Was that your answer?

A Yes.

Q And were you upset that you felt that you didn't get the better lists?

A Not necessarily.

Q But you didn't.

MR. SCHIEREN: Didn't what?

Q [Continuing:] Did you feel that you got "the better lists of the better companies"?

A Not from the firm.

Q You didn't get it from the firm. And that upset you, didn't it?

A NOt necessarily.

Q Now, at Brooks, Hamburger, what is your job there?

A Registered representative.

Q And you still want to stay in business, don't you?

A Yes.

MR. HECHT: I have no further questions.

THE COURT: Anything further?

MR. SCHIEREN: No further questions.

THE COURT: All right. Next witness.

3 jgsr Kean - direct

[Witness excused.]

MR. SCHIEREN: Plaintiff calls as its next witness Mr. Milton Kean.

MILTON KEAN, called as a witness by the plaintiff, being first duly sworn, testified as follows:

*** DIRECT EXAMINATION

BY MR. SCHIEREN:

Q Mr. Kean, are you currently employed?

A I am self-employed.

Q How and in what capacity?

A I'm an attorney. I have an office at 60 East 42nd Street. Recently my son became a junior partner, so I suppose when I say "self-employed", I'm not quite accurate.

Q How long you been so employed, Mr. Kean?

A With my son, since October [illegible] On my own, since 1939.

Q Mr. Kean, are you the subject or were you the subject of an SEC enforcement action?

A I was.

Q What was the name of that case?

A SEC v. Computer Power International Corp., American Leisure Services, Inc., Lawrence N. Hurwitz, Norman Raskin, and myself. I think those are all of the defendants.

Q And what was the outcome of this lawsuit?

A Well, different parties had different results.

Q What was the outcome with respect to you?

A I, myself, was barred from filing incorrect Forms 10K or 8K's with respect to these two companies or any other companies.

Q Was an injunction entered against you?

A Yes.

Q And was there also some impact on your ability to purchase in the securities field?

A I voluntarily withdrew from the practice, with leave to reapply in some set period.

Q Is that a three-year period?

A Three years.

Q Mr. Kean, did you ever act as counsel to Lawn-A-Mat?

A I did.

Q When?

A I did their non-SEC work up until about the middle of 1971, and then thereafter I did all of their work.

Q Until what period of time?

A Up until they filed a petition under Chapter XI, in January of 1976.

Q Lawn-A-Mat filed a petition under Chapter XI?

A Yes.

Q Mr. Kean, were you acting as counsel for Lawn-A-Mat during the period from November 1974 to August of 1975?

A Yes.

Q Did you ever represent Daniel Dorfman?

A In certain areas, yes.

Q Well, did you ever provide assistance to Mr. Dorfman in connection with the sale of Lawn-A-Mat stock?

A I'm sorry?

Q Did you ever provide assistance to Mr. Daniel Dorfman in connection with his sale of Lawn-A-Mat stock?

A Yes. Late in 1974 or early in 1975 he sold one thousand shares of the stock.

Q Can you describe how that came about?

A Sometime on November 20th or thereabouts, following a telephone conversation with Norman Schreiber, and I think also following a conversation or the delivery by Mr. Dorfman of his stock, I forwarded a stock certificate representing 10,000 shares of pre-split Lawn-A-Mat stock, representing actually therefore 40,000 shares, to E. L. Aaron & Company together with a covering letter and a copy of a Form 4, I think it was.

Q Form 144?

A Form 144. I'm sorry.

Q You sent the stock certificate and the Form 144 with the cover letter to E. L. Aaron & Company, is that correct?

A Right.

MR. SCHIEREN: Your Honor, I have marked as Plaintiff's Exhibit 23 for identification a cover letter from Mr. Kean to E. L. Aaron & Company dated November 21, 1974.

THE COURT: No objection?

MR. SCHIEREN: And Exhibit No. 24 is a copy of the stock certificate of Consolidated Home & Garden Services Corporation for 10,000 shares to Mr. Daniel Dorfman, and an attached stock power.

THE COURT: Any objection?

MR. HECHT: I have an objection just to the first one, your Honor, because I am not sure that the company ever received this letter and I think it is contrary to the Form 144 that was enclosed therewith.

1 jksr Kean - direct

BY MR. SCHIEREN:

Q Mr. Kean, I show you what has been marked as Plaintiff's Exhibit 23 for identification and ask you if you can identify that document.

A Yes. This is a copy of my letter and the receipt of everything by Mr. Schreiber.

Q Is that the letter you sent to Mr. Schreiber --

MR. SCHIEREN: Strike that.

Q Is that the letter you sent to E. L. Aaron & Company?

A It is a copy of it, yes.

MR. HECHT: You got the receipt with it. You didn't announce it before. I have no problem.

THE COURT: It is received in evidence.

[Plaintiff's Exhibit 23 received in evidence.] **

MR. SCHIEREN: I offer Exhibit 24.

THE COURT: Received.

[Plaintiff's Exhibit 24 received in evidence.] **

THE COURT: What is it, Consolidated --

MR. SCHIEREN: Consolidated Home & Garden Services which became Lawn-A-Mat.

THE WITNESS: There was a change of name

thereafter, your Honor, to Lawn-A-Mat.

THE COURT: Without the necessity of turning in these certificates?

THE WITNESS: Without the necessity.

Q What happened after you sent the stock certificate and 144 Form to E. L. Aaron & Company?

A Early in January I received an inquiry from Mr. Dorfman indicating that he had not received back the unsold portion of the stock, and I wrote a letter to E. L. Aaron & Company inquiring as to what happened to the balance of the stock.

MR. SCHIEREN: At this time, your Honor, I have Exhibit 25 for identification which is a letter from Milton Kean, dated January 3, 1975.

THE COURT: Any objection?

MR. HECHT: No, your Honor.

THE COURT: Received.

MR. SCHIEREN: I offer this into evidence.

*** [Plaintiff's Exhibit 25 received in evidence.]

Q Mr. Kean, did you ever represent Mr. Fred Dorfman?

A I was not his attorney in a general sense. I did write one or two opinion letters for him.

Q And when did you write an opinion letter for him?

A Well, he sold some of the stock in January of 1975 and I wrote an opinion letter at that time for him.

Q Is that in connection with Lawn-A-Mat stock?

A Lawn-A-Mat stock.

Q Can you describe the circumstances under which you wrote this opinion letter?

A I received correspondence, I think, from Mr. Fred Dorfman who at that time, I believe, was in Texas, indicating that he desired to sell 20,000 shares of his stock through Weller, I think it was. Weller & Company, and in connection therewith I received from Weller & Company a letter confirming that it was an unsolicited brokerage transaction, sent me a copy of the form 144 and the stock certificate and requested that I forward these on to the transfer agent with an appropriate opinion letter if I felt I could write one, and I did.

Q Mr. Kean, did you ever receive any complaint regarding E. L. Aaron & Company or any of its employees?

A Yes.

Q When?

A The first of them I think started in January of 1975 with respect to Norman Schreiber and I think Donald Jacobson.

Q From whom did you receive these complaints?

A Either from Mr. Fernando Frazo or from Nina Lane who worked at the company.

In addition to that, I received a call from a dealer distributor of the company, a Howard Kaufman.

Q And can you describe the complaints as they were relayed to you?

A I was told that information is being given to the dealers of the company with respect to the fact that Lawn-A-Mat was making a great deal of money, or was getting a ten per cent franchise fee and was buying a chemical factory, Di-Chem, in New Jersey, I think it was.

Q Was anything else said to you in connection with these complaints?

A Not at that time.

Q Was anything said to you at that time in connection with a car?

A I don't think the car came up at that time, no.

Q What did you do after you received this complaint?

A I spoke to Mr. Schreiber on the telephone and to Mr. Jacobson on the telephone several times, advised them that this information was not correct, that the company was not doing well financially, it was in bad financial condition, that as far as I knew it had no plans to buy a chemical factory, and that the company received a ten per cent franchise fee was incomplete in that it failed to disclose that anywhere from 25 per cent to 50 per cent of that franchise fee was in fact returned by the company to its distributors, so that the net amount received by the company in franchise fee was substantially less.

Q Mr. Kean, did you ever call Peter Aaron?

A In April of 1975 I called Peter Aaron.

Q What did you say to him at that time?

A I told him that two of his employees, to my knowledge, were giving incorrect statements to either dealers, distributors or stockholders of the company and it would have to be stopped.

He agreed at that time that they would discontinue their activities in Lawn-A-Mat stock.

Q Did you tell him in what connection his employees were causing problems?

A I told him they were making representations as to what the financial condition of the company was, that it was building a tractor, and I don't recall what else was involved at that time.

Q Did you say anything to him about a car?

A I am not sure if the question of the car came up at that time or not. It may have. It is possible it did. I know there was talk about a car somewhere in that area or earlier.

Q But you told Mr. Aaron that his employees should stop whatever they were doing?

A Yes,I told him that we were not doing these things.

Q What did Mr. Peter Aaron say to you?

A He said that he would have the company discontinue its activities in Lawn-A-Mat stock.

Q Was anybody else present during this conversation you had on the phone with Mr. Peter Aaron?

A This was a telephone conversation.

Q Was anybody else in your office at that time, do you recall?

A I don't think so. I don't know. I don't remember.

Q Did you ever call Peter Aaron again?

A This is the only record that I have of a phone call to Mr. Aaron.

Q Do you recall making another phone call to him?

A I have a recollection of the telephone call, but I don't recall -- looking through my telephone log, I never found any indication as to when and where it was made. Of course, it could have been placed from outside the office, in which case it wouldn't be in the log.

THE COURT: But you have no recollection of a second call?

THE WITNESS: I have a recollection there was a call, but I can't place it.

THE COURT: There was a second call subsequent to this one?

THE WITNESS: I think it was subsequent to this.

Q During the period that you were counsel for Lawn-A-Mat, was Lawn-A-Mat manufacturing or planning to manufacture tractors or combines?

A Lawn-A-Mat itself in my opinion was not, no.

Q Was Lawn-A-Mat manufacturing or planning to manufacture an automobile?

A No.

Q Was Lawn-A-Mat contemplating a listing on the American Stock Exchange?

A No.

Q Was Lawn-A-Mat acquiring or planning to acquire its chemical suppliers?

A No. There was talk about it, but we never were planning; we didn't have the finance report.

Q Was Lawn-A-Mat acquiring or planning to acquire Majestic Seed Company?

A Majestic Seed is a hybrid blue grass. It is not a company. Lawn-A-Mat had a commercial control of that hybrid grass. That is all it was.

Q Was Lawn-A-Mat acquiring or planning to acquire a company known as Rainbird?

A Rainbird I believe was the name of a sprinkler that had been manufactured by a company and we had it in warehouse, but I don't think it was a company as such.

Q Was Lawn-A-Mat planning to introduce a car on the market in April of 1975?

A No.

Q Was Lawn-A-Mat acquiring or planning to acquire a fertilizer manufacturer?

A No. In April of 1975?

Q No, during the period you were counsel to them.

A They said there had been some talk at a board meeting about the need for the company to acquire a source of supply, but we never had the financial wherewithal to do it.

Q Was Lawn-A-Mat planning to pay dividends?

A No.

Q Were Lawn-A-Mat's earnings improving during 1974 and 1975?

MR. HECHT: Object to the form of the question.

THE COURT: No, I will permit it.

A Improving is a broad term. I don't know. It was losing money before and continuing to lose money. If you say it was improving --

THE COURT: Was it a greater rate or a lesser rate in '75 than '74?

Q Did Lawn-A-Mat lose money in '74?

A Very substantial moneys than in substantial moneys in '75.

THE COURT: Were losses in '75 greater than the losses in '74?

THE WITNESS: Without lookin at the 10K I wouldn't hazard a guess, but I would say they are pretty comparable.

Q Was Lawn-A-Mat working with a Japanese company to build a car?

MR. HECHT: Objection, your Honor. There is no testimony in the record -- it is a loaded question.

THE COURT: I will permit it.

A Not that I know of.

Q Was Lawn-A-Mat going to have $5,000,000 in sales during 1975?

A I don't know what the basis of that would be. I don't see how it could.

Q Was there a basis to project that Lawn-A-Mat was going to have $5,000,000 in sales in 1975?

A Not in '75.

Q Was there a basis to project in five years Lawn-A-Mat would have $25,000,000 in sales?

A Not at that time, no.

Q Was Lawn-A-Mat making any new products?

A I didn't hear you.

Q During 1974, 1975, was Lawn-A-Mat making any new products?

A Lawn-A-Mat didn't manufacture products. It had a program which it tried to sell to the public. It was not a product as such.

MR. SCHIEREN: I have no further questions.

THE COURT: Very well.

CROSS-EXAMINATION

BY MR. HECHT:

Q Mr. Kean, since 1965, how many Rule 144 transactions have you handled?

A Since what year?

THE COURT: '65.

Q Or restricted stock.

A You said Rule 144.

Q Or its predecessor, sales by no action letters.

A 40, 50, perhaps less.

Q Okay.

And prior to filling out --

MR. HECHT: Well, at this time I would like the Court Clerk to mark a photostatic copy of a two-page document entitled Form 144, in the name of the issuer, Lawn-A-Mat for Dan Dorfman, as Defendant's Exhibit H.

THE COURT: Any objection to this being received in evidence?

MR. SCHIEREN: Yes, your Honor. We don't know if that is the actual form.

[Defendant's Exhibit H marked for identification.]

THE COURT: Yes, marked for identification.

MR. HECHT: Let the record reflect I have handed a copy of this exhibit to the witness.

Q Mr. Kean, did your office type that form up?

A I do not know. My secretary doesn't know either. I asked her.

Q Did you issue an opinion letter with respect to this security?

A I issued an opinion letter with respect to 1,000 shares of Lawn-A-Mat stock sold by Mr. Dan Dorfman. I don't know if it is this particular one or not.

Q Okay. Would you look at that form and to your recollection is any fact incorrect on that form? You are the issuers' counsel, I understand.

A It was my impression that my opinion letter in that matter was written in January and this is dated November, so that I don't know if there is a relationship here or not.

Q Well, I requested that information when I examined you before trial, and I never got anything from your office.

Do you know where that opinion letter is?

A No. I looked for it and I don't have it. I told you that. I said the transfer agent would probably have it, but you can subpoena them.

Q And were you going to try to get that letter?

A I was not able to get the letter. I looked through my files and didn't get it. It was not in my files.

Q On that Form 144, to your knowledge, is that substantially similar or the same form which you filed with the SEC of Dan Dorfman?

MR. SCHIEREN: Your Honor, the question is, is it the form or isn't it the form?

THE COURT: He has already answered he doesn't know.

MR. HECHT: Now I am asking what the facts are.

A I don't know the form that was filed with the SEC, so I can't tell you.

Q What makes you think that that is not the actual form?

A Because of the date on it.

MR. SCHIEREN: Objection.

THE COURT: I will permit it.

Q What do you mean, the date on it?

A This is dated November 20th. My recollection is that my opinion letter to the transfer agent was written somewhere around the first week of January. It's possible, but I don't know.

Q Now, when stock is sold, is it usually represented by confirmation slips?

A Generally, yes .

Q The name Weller & Company is on there, isn't that correct?

A Yes.

Q And they were the broker that was acting as agent for Mr. Dorfman?

A That's what this document indicates, yes .

Q And that is what you were so advised?

A In January, yes.

MR. SCHIEREN: Your Honor, I believe we have a copy of the opinion letter that Mr. Kean wrote in connection with this transaction.

THE COURT: All right.

MR. HECHT: Well, at this stage, let me go through one by one the brokerage slips, when they were sold.

Q Are you aware that Mr. Dorfman opened up an account at J. W. Weller sometime in November 1974?

A No.

MR. HECHT: Your Honor, I should point out these documents were admitted Monday, when you were not here. We had agreed to admit them Monday, 1 through 17 of the plaintiff's in connection with the examination of Mr. Firrincieli.

MR. SCHIEREN: Actually, we took a deposition, your Honor, when the Court could not hold session on Monday, and in connection with that deposition the parties stipulated that we would offer as evidence Exhibits 1 through 12 in connection with that deposition.

MR. HECHT: That is what I am referring to.

MR. SCHIEREN: I have no objection to admitting those documents into evidence at this time as Plaintiff's Exhibits.

*** [Plaintiff's Exhibits 1 through 12 received in evidence.]

THE COURT: All right. You need No. 1 first?

MR. HECHT: I want Mr. Kean to look at 1, 2 and 3.

THE COURT: All right, we will give him those while the Clerk is marking the rest of them.

All right, he already has 1, 2 and 3.

MR. HECHT: Let the record reflect that Plaintiff's Exhibit No. 1 is a confirmation slip, an order ticket between J. W. Weller & Co. --

THE COURT: For 1,000 shares.

MR. HECHT: -- 1,000 shares, E. L. Aaron &

Co.

THE COURT: Very well. The witness has looked at it. What do you want to ask him about it?

Q Does this refresh your recollection when Mr. Dorfman sold these 1,000 shares of stock?

A You mean through Weller & Co.?

Q Right.

A No, I didn't know. As a matter of fact, there is a later letter where I wrote to E. L. Aaron & Company for the stock.

Q I think the later letter you are referring to was written to your transfer agent.

A No, I think there is one I wrote to E. L. Aaron & Company asking for the stock. I didn't know at that time that they were not involved.

MR. SCHIEREN: Plaintiff's Exhibit 25, your Honor.

MR. HECHT: That is No. 21 --

THE COURT: Gentlemen, let's put some questions to the witness and we will get the testimony out that way.

THE WITNESS: Sorry.

THE COURT: That's all right.

Q Do you understand as the issuer's counsel who was issuing an opinion letter under Rule 144 you are under an obligation to investigate the facts?

A Yes.

Q And in that connection, aren't you under an obligation to ascertain the truth of the facts put on the Form 144 by the selling stockholder?

A Yes.

Q And you had known Mr. Dorfman for what, at least the past ten years?

A I think about 1967 is when I met him,1968, somewhere in that range.

Q And this was the end of 1974, and you had done legal work for the company for many years before that?

A Yes.

Q Is it a fair statement to say that you were intimately familiar with the legal affairs of the company?

A Yes.

Q At any time were you paid a salary by the corporation for anything other than legal work?

A No.

Q With respect to this form 144 or a form 144 and your opinion letter relating to the stock of Dan Dorfman, is there anything that came to your attention from the company's point of view that this was illegal or improper in any way?

A No.

Q With respect to the form 144 and the legal opinion you issued in connection with the sale of stock by Fred Dorfman, is thre anything that came to your attention as counsel to the company that this transaction was in any way improper or illegal?

A No.

Q As cocounsel, were you aware in 1974 that Lawn-A-Mat had furnished to E. L. Aaron & Co. its stockholders list?

A Not in 1974, no.

Q I'm talking about the stockholders list.

A I did not know it was furnished until long afterwards.

Q How about the dealers list or the franchise list?

A I didn't learn of that until long after this.

Q And the company never discussed this with you?

A No.

Q They never asked your permission?

A No.

Q But you found out afterwards that the company had furnished that information to E. L. Aaron?

A Yes.

Q When you spoke to Peter Aaron, are you sure it was Peter Aaon or was it Peter Aaron or Eddie Aaron?

A I have a recollection in one of these

conversations, I don't know which one it is, that I asked for Mr. Aaron, and the man answered as Eddie Aaron and when I told him what the problem was on Lawn-A-Mat, he said, "No, you want Peter," and then whoever it was transferred me to Peter.

Q So that was -- but you testified to only one call that you made.

A I remember-- I say I have specific knowledge of a log of only one call. Whether that occurred in this -- I think it was in this call but I can't be positive.

Q With respect to this one call that you made, was this before or after the meeting in your office with Mr. Erazo, Mr. Jacobson and Mr. Dorfman?

A That was after, I think, about a week later.

Q But isn't it a fact that you didn't even bother to visit the Plainview facility a week after you called Aaron & Co.?

MR. SCHIEREN: Objection to the form.

THE COURT: Sustained.

Q At the time you made this call, had you physically visited the premises in Plainview?

MR. SCHIEREN: What premises?

MR. HECHT: The premises where the car has been described by the dealers and others.

MR. SCHIEREN: He hasn't described it.

A I had visited the premises some time ago, but not at this time.

Q What do you mean, back in 1973?

A 1973 and early 1974, I had been there, and I had also been there in, I think, February of 1975.

Q And you called Aaron & Co. in April?

A Yes.

Q And you recall what was discussed at that meeting at your office between yourself, Mr. Dorfman, Mr. Erazo and Mr. Jacobson?

A No, I really do not. I just have a very vague recollection of that meeting.

Q As a result of that meeting, did you subsequently go out and visit the Plainview facility?

A No, not as a result of that meeting.

Q After that meeting did you go out and visit the Plainview facility?

A Yes.

Q Between that meeting and when you went to visit E. L. Aaron & Co. -- excuse me-- between that meeting and when you went out to Plainview, isn't that when you called E. L. Aaron & Co.?

A In between those two periods, yes.

Q So at that time you had no definite knowledge of this car, whoever was manufacturing it, you had no personal knowledge?

A In April of 1975 nobody was talking about manufacturing a car.

Q How about a tractor?

A There was talk of United Stellar manufacturing a tractor which would be used, for Lawn-A-Mat, or whoever else wanted to use it.

Q Didn't Lawn-A-Mat have an option to buy United Stellar?

A Lawn-A-Mat had an option to acquire all of the stock of United Stellar, yes.

Q Didn't they also have an option to acquire stock in certain related corporations, such as Starlight Manufacturing?

A Yes, and Coinmeco.

Q Where was Starlight Manufacturing located?

A Joplin, Missouri.

Q Do you recall any discussions about a molding machine located in Joplin, Missouri?

A Yes, they had one of the largest plastic-forming machines in the country. I think it was a 24 footer which would permit molding Cycolac or other ABS polymer-type plastics into whatever form you want, bulk, anything.

Q To your knowledge, was that machine capable of molding fiberglass bodies for tractors and automobiles?

A It couldn't work fiberglass.

Q What did it work?

A It was not intended to work fiberglass. It was intended to work on ABS polymer, a plastic. It would be a thermal operation.

Q With respect to this thermal operation, could it have molded tractor bodies or auto bodies?

MR. SCHIEREN: Your Honor, I will object to the relevancy of this.

THE COURT: Well, I will let him answer this question, that's it.

A I'm only a lawyer, not an engineer.

THE COURT: You don't know. All right.

Q Now, to your personal knowledge, did you ever receive any complaints that anyone associated with E. L. Aaron & Co. was making any misrepresentations about Majestic Seed?

A That I think came up in March, April or May of 1975. That was one of the items that came up about that time.

Q Did you ever state anything to anyone at

E. L. Aaron & Co. about this Majestic Seed?

A I spoke to Mr. Schreiber, I spoke to Mr. Jacobson, and there was that one conversation with Mr. Peter Aaron.

Q Before, when you testified, that wasn't mentioned, the Majestic Seed in that conversation?

A Specifically, I don't know if it was or not. I'm sure that it may have come up at that time. There were a number of items, but I don't remember all of them.

Q About how long were you on the phone?

A Probably ten minutes, more or less.

Q When you called Jacobson and Schreiber, that was before you called anyone at E. L. Aaron & Co., wasn't that?

MR. SCHIEREN: Jacobson and Schreiber work for E. L. Aaron & Co.

MR. HECHT: We are talking about the call to the main office.

MR. SCHIEREN: You are talking about the call to Peter Aaron.

MR. HECHT: Peter or Ed. I think the call was made to Ed and transferred to Peter.

A I had many calls running on from the beginning of January right on through July with respect to this problem with Donald Jacobson and Norman Schreiber.

Q At your examination before trial, did you bring on your own a log and your diary?

A I was asked to.

Q And did you produce one?

A Yes.

MR. HECHT: At this time I'd like this marked as Defendant's Exhibit I.

xx (Defendant's Exhibit I marked for identification)

Q Is that a photostatic copy of what you produced?

A Yes.

MR. HECHT: Your Honor, it should be pointed out for the record that this document consists of four pages. The first two pages are a diary and the last two pages are a phone log and that the diary runs from January 18, 1975 through Mey 31, 1975, and that the phone log runs from November 19, 1974 through August 5, 1975.

Q Would you first take a look at the phone log, Mr. Kean? That is the last two pages.

A I think you may have been inaccurate in your description. I think the phone log starts on the bottom of the first page and what is confusing here, I think is, you have got pages 2 and 3 out of order, and that's why --

MR. HECHT: OK. Let me give it back to the Court Clerk and I will ask you to unstaple it and we will put it back in the right order.

THE COURT: I suppose you would have been better off marking one as a diary and the other one as a phone log.

Q Mr. Kean, why don't you put them in order because the dates confuse me now.

A Let me correct it. The first page covers the diary log, and these next three pages cover the telephone log.

Q Going first to the telephone log, do you recall what the substance of the conversations in the latter part of 1974 was?

A The first of the conversations occurred around November 19, 20, 21 and 26, and I presume that they covered the 1000 shares of stock that Mr. Dorfman wanted to sell.

Q You don't know. You don't recall what they --

A No.

Q But isn't it a fact --

A But they do make a note here on November 19, 1000 shares of LAM, E.L. Aaron & Co. and the address and Peter Aaron, and the name of Weller, so there is someting here indicating that it had to do with the stock.

Q OK. But to your knowledge, you never received any complaints about Jacobson or Schreiber prior to December 31, 1974, did you?

A I can't pinpoint the time, but generally speaking, that is probably correct.

Q And in January did you receive or obtain notice of any complaints with respect to the activities of Jacobson or Schreiber?

A Yes, I received a phone call from Mr. Fernando Erazo, a call from Mr. Howie Kaufman, with respect to the items that I mentioned before.

Q And did you call Mr. Kaufman?

A No, Mr. Kaufman called me.

Q Mr.Kaufman called you. And he was the Lawn-A-Mat dealer?

A He was the Lawn-A-Mat dealer and I eblieve also distributor.

Q Distributor. And did you discuss this at all with Dan Dorfman?

A Not until several weeks later.

Q OK. And was Dan Dorfman the chairman of the board and the largest stockholder of the company?

A In January of 1975 he was still president of the company, I think.

Q Was he also chairman of the board of directors at that time?

A The bylaws made no provision for a chairman of the board, so there was no real basis for calling him that. There had been discussion about amending the bylaws to provide for such a title.

Q OK.

But you didn't in January, call anyone-- did you ever tell anyone at E. L. Aaron & Co.,whether it was Schreiber, Jacobson or anyone else, about Mr.Kaufman's call in January?

A Yes, the day after I got the call or the same day I spoke to Mr. Norman Schreiber, called again to confirm what Mr. Kaufman told me, and at that time apparently the name of Jack Kirston, an attorney in Newark, was brought into the picture, and I checked with him if he knew anything about it.

Q Isn't it a fact that Mr. Schreiber denied to you that he was in any way saying anything improper?

A Yes, he insisted the company was-- his statement was that he was telling me the truth, that this was true.

Q And did he tell you the basis for his statement?

Isn't it a fact he did tell you the basis for his statement?

A No, not at that time.

Q You did not ask him as an attorney?

A I just told him it wasn't so.

Q And he said it was?

A Whatever he said wouldn't have made any difference. I knew it wasn't so. I told him it wasn't so.

Q Weren't you being paid $24,000 a year by Lawn-A-Mat just for your being SEC counsel?

A No.

Q As a matter of fact, that was your retainer.

In addition you received substantial legal fees from the company?

A The SEC work I did for the ocmpany was very minor compared to the overall total of the work I did.

Much more work involved with Lawn-A-Mat. This is a franchise operation, in 32 states, involving the problem of maintaining them in 32 states.

Q This was a major client of yours, wan't it?

A Yes, it was.

Q And is it fair to state you probably received over $50,000 in fees from them?

MR. SCHIEREN: Objection, your Honor.

A Over how long a period?

Q In a one-year period.

A No.

Q 1974?

A No. In 1974 I think I received about $20,0000 odd.

Q OK. But --

A They owed me a lot of money. I billed a lot more.

Q In 1973 what did you bill and collect?

THE COURT: Does it really make any difference?

MR. HECHT: They went bankrupt is what he is saying.

THE COURT: He didn't make them go bankrupt.

MR. HECHT: I'm trying to find out the basis for him not goind behind or checking at with Mr. Schreiber what the story was.

THE COURT: All right. He said he was aware of these things, that he told Mr. Schreiber that they were completely untrue and that was it.

Isn't that correct?

THE WITNESS: That is correct, your Honor.

Q Did Mr. Schreiber respond to what you said?

A Yes, he said he would stop saying it.

Q And to your knowledge did he stop saying it for a while?

A I presume he did.

Q When is the next time you heard about any improper activities by Mr. Schreiber and Mr. Jacobson, or alleged improper activities?

A During the month of January there are several areas. The chemical plant was one item. They also were talking about how much the company was receiving in franchise fees, and also about how profitable the company was, and as each of these statements were brought to my attention, I spoke both to him and Mr. Jacobson and advised them that it was not so.

Q As to their franchise fees, didn't you go into quite a deal of depth and detail with Mr. Jaco[illegible] exactly how the franchise fee worked vis-a-vis the distributor?

A Yes, I did.

Q And Mr. Jacobson said now that I understand it, that we won't do it any more?

A That is correct.

Q And istn't it a fact that after you had that talk with him, you never heard any more complaints about any allegedly improper statements as to how Lawn-A-Mat derived its franchise fees?

A Yes, as far as I understand, that was the end of it.

Q OK.

Now, with respect to the chemical facilities, were you aware that Mr. Schreiber had had a meeting with Mr. Erazo where the possibility of the company setting up its own blending operation was discussed in the end of 1974?

A I was unaware of such a meeting.

Q At the meeting of April 13 in your office,or thereafter, do you remember a discussion between you and Mr. Dorfman with respect to the difference between a prototype and a working production model?

A What was that date?

Q Let me rephrase that question.

After your meeting in April, did you subsequently go out and visit the facility in Plainview?

A We visited the facility at Plainview following a board of directors meeting on April 22.

Q Did you go immediately out to the plant?

A We started the board meeting. The meeting was not completed. And in lieu of finalizing that meeting we went out to look at the facility in Plainview.

Q And do you remember an argument between you and Mr. Dorfman about the difference between a prototype production model and a working production model, when viewing this automobile there?

MR. SCHIEREN: Your Honor, I object to that.

THE COURT: You are back inthe area that I said was not relevant to our issues here.

MR. HECHT: I think one of the problems here, your Honor, is the status of the car. Is the SEC saying there was a car but the issue is who was producing the car?

MR. SCHIEREN: No, your Honor.

First of all, we don't think there was anything that can be called a real car. But in the event there was, it wasn't Lawn-A-Mat's. That's what we are saying.

MR. HECHT: That is exactly my point.

If I can get in what the status of this "thing" was from his eyes -- he is your witness, he went out there, he physically saw this --

THE COURT: He said as far as he knows there was no intention or plans in the company to produce such a car.

Isn't that correct?

THE WITNESS: There was an old vehicle that had been taken apart out at the place,but it was not in running condition and Mr. Discount at that time indicated that was not what they were talking about.

Q What did Mr. Dorfman indicate to you? Didn't he indicate that that's what he was talking about and that's what he had been talking about to Schreiber and Jacobson?

A The talk of the car took place-- occurred in 1974, not in 1975, long before these events. It was never implemented.

Q We know it was never implemented. What I'm saying is that when you went out to the facility in April or May of 1975 and you looked at this thing- - first of all, was it on an assembly line kind of arrangement?

A No.

Q Did you see a chassis?

A There was a chassis there, yes.

Q OK. Was there a motor mounted on the chassis?

A No. It had been taken out.

MR. SCHIEREN: Your Honor, I object.

THE COURT: Go ahead.

Q Do you recall a discussion where you took the position that what you saw was a prototype?

A Of the car? No. Not of the car.

Q Do you recall Mr. Dorfman saying that this was a orking production model?

A Of the car?

Q Yes.

A No.

Q During your conversation with Peter Aaron, or Ed Aaron, as you testified to before, do you recall ever stating that you shouldn't discuss the car or the tractor, because it is not set forth in any filing with the SEC?

A No.

Q At that time, in April of 1975, were you on notice of your problems with the SEC in connection with another matter?

A Myself personally?

Q Yes, your personal problem.

A April of 1975?

Q Yes.

A I don't think it had developed yet.

MR.HECHT: I have no further questions.

THE COURT: Any redirect?

MR. SCHIEREN: Just a few questions, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. SCHIEREN:

Q Mr. Kean, I believe you testified before that Lawn-A-Mat had an option to acquire stock of United Stellar?

A Yes.

Q Do you know if Lawn-A-Mat was financially able to exercise that option during October of 1974 through August of 1975?

A Well, the option that was acquired was in February of 1975 and would have been an exchange of stock, because with stock they would not have needed any cash in order to make a dealing. So it could have been done.

Q Was it exercised?

A What?

Q Was it exercised during that period?

A No, it was not exercised.

THE COURT: How long was the option for?

THE WITNESS: I think it had one year to run.

Q And the facility out in Plainview that we have been referring to, who owned that facility, do you know?

A Starlight Tool and Manufacturing Corporation I think was the full name, was the owner of the property, and the stock was owned by Bernard-- was registered in the name of Bernard Discount and was held by the Republic Corporation, among other things, other securities, as collateral for Discount's indebtedness to the Republic Corporation.

Q But the facility was not owned by Lawn-A-Mat, is that correct?

A No, it was not.

MR. SCHIEREN: No further questions.

MR. HECHT: Just one.

RECROSS-EXAMINATION

BY MR. HECHT:

Q Didn't Lawn-A-Mat for a while in 1975 use that facility as its headquarters?

A I think it was in 1974.

Q 1974?

A Yes.

Q They used that for a while?

A They used it for a while when they were trying to manufacture combines out there for the company. The company had facilities out there, but eventually they moved away.

MR. HECHT: Your Honor, I have no further questions.

THE COURT: You may step down.

(Witness excused)

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THE COURT: How long is your next witness going to be?

MR. MANDEL: On direct, your Honor. The next witness will probably be ten, fifteen minutes at the outside.

MR. HECHT: It cuts it awfully close, and he'll be very long on cross, or I'll adopt him as my own witness and he'll be very long.

MR. MANDEL: The next witness is Mr. Dan Dorfman, your Honor.

THE COURT: Have you got another witness or is this your last witness?

MR. MANDEL: No. But we could introduce depositions.

THE COURT: You may want them to be introduced, but I am not going to let you. You are going to have to agree on what parts you want in and you are going to have to submit to me a summary of what that testimony is. If you can agree on it, fine. If you can't why, then, each of you put in what your own idea of a summary is. I am not going to just read depositions thrown at me.

MR. MANDEL: We would like to introduce certified copies of public filings with the Commission.

This would be a good time to do that.

THE COURT: All right.

MR. MANDEL: We would like to introduce into evidence the public filings of Lawn-A-Mat. They are Plaintiff's Exhibit 26, which is Lawn-A-Mat's Form 10K for the year ended 1973.

THE COURT: Any objection?

MR. HECHT: I don't think it is relevant. But this is a bench trial so --

THE COURT: All right. Received.

MR. MANDEL: Plaintiff's Exhibit 27, which is Lawn-A-Mat's 1974 10K report.

THE COURT: What about that?

MR. HECHT: Your Honor, I think that would be relevant.

THE COURT: That's relevant? All right. It will be received.

MR. MANDEL: Plaintiff's Exhibit 28, which is Lawn-A-Mat's quarterly report for the period ended June 30, 1974.

THE COURT: Any objection?

MR. HECHT: For the June 30 quarter? No objection.

THE COURT: All right. Received.

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MR. MANDEL: Lawn-A-Mat's quarterly report for the quarter ending September 30, 1974.

MR. HECHT: No objection.

THE COURT: Exhibit 29. Received.

MR. MANDEL: Plaintiff's Exhibit 30, which is Lawn-A-Mat's quarterly report for the period ending March 31, 1975.

THE COURT: No objection?

MR. HECHT: No objection.

THE COURT: Received.

MR. MANDEL: Plaintiff's Exhibit 31, Lawn-A-Mat's quarterly report fo r the period ending June 30, 1975.

MR. HECHT: No objection.

THE COURT: Received.

MR. MANDEL: Plaintiff's Exhibit 32 --

THE COURT: What do these figures show in those quarterly reports?

MR. MANDEL: They show both the deteriorating financial condition of Lawn-A-Mat and they omit to show any reference to the car, the production of a tractor or any of the misrepresentations made by Jacobson and Schreiber.

MR. HECHT: I would like to object to counsel summarizing. Whether or not they are making misrepresentations --

THE COURT: I asked him.

MR. MANDEL: Plaintiff's Exhibit 32, which is Lawn-A-Mat's Form 8K for the month of June 1973.

THE COURT: Any objection?

MR. HECHT: June '73?

THE COURT: Yes.

MR. MANDEL: It makes specific reference to an agreement with Stellar.

MR. HECHT: That I have no objection to.

THE COURT: Received.

MR. MANDEL: And Plaintiff's Exhibit 33, which is Lawn-A-Mat's 8K for the month of July 1974.

MR. HECHT: What is it about?

MR. MANDEL: Once again, it only deals with Stellar.

MR. HECHT: I have no objection. I think we both propose almost identical facts on Stellar.

THE COURT: All right. received.

MR. MANDEL: The remaining exhibits will be depositions, your Honor. We will have to discuss that.

THE COURT: You'll have to discuss that. You gentlemen ought to know by this time that that's the only way to put in a deposition before any Judge in this court.

MR. HECHT: Mr. Mandel and I went over certain items yesterday.

MR. MANDEL: Perhaps there is a misunderstanding. We don't intend to introduce the entire depositions.

THE COURT: I understand. But even what you put in, I want to know what the summary is and if you agree on it. If you both agree on it, summaries can come in, and that's what I need. It will save a lot of reading and effort and time.

MR. HECHT: All right.

THE COURT: All right.

[Plaintiff's Exhibits 26 through 33 for identification were received in evidence.]

THE COURT: We will start at 9:45 tomorrow morning.

[An adjournment was taken to Thursday, January 13, 1977 at 9:45 a.m.]

— — —

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SECURITIES AND EXCHANGE COMMISSION

- v s -

76 Civ. 0907

E. L. AARON & COMPANY, et al.

January 13, 1977

[10:12 a.m.]

- - -

[Trial resumed.]

THE COURT: All right. Proceed.

MR. MANDEL: The Securities and Exchange Commission calls Daniel Dorfman to the stand.

DANIEL DORFMAN, called as a witness by the plaintiff, being first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. MANDEL:

Q Mr. Dorfman, are you currently employed, sir?

A Yes, I am.

Q With whom and in what capacity?

A I'm the president of Lawn-A-Mat Chemical & Equipment Corp.

Q How long have you been so employed, sir?

A I founded the company in May of 1961 and I was president of the company until sometime in 1975, and

I resumed the office in December of 1975.

Q Did you hold any other offices at Lawn-A-Mat, sir?

A Well, I was called Chairman of the Board, but I'm told that this was not an official title, it was just an honorary title.

Q Are you a director of the company, sir?

A Yes.

Q How long have you been a director?

A Since its inception in 1961.

Q Could you describe the business of Lawn-A-Mat, sir?

A Yes. I developed, invented a machine that does everything necessary for the building and maintenance of a lawn in a single motorized operation with a non-skilled operator. Because this is the only precision machine that runs on a lawn, I formulated materials, concentrated lawn materials, to run through this machine --

THE COURT: You will have to slow down just a little bit.

You invented a machine that does everything necessary --

A [Continuing:] -- for the building and

maintenance of a lawn in a single motorized operation, eliminating all of the labor.

This machine enables you to use concentrated materials, eliminating the cost of these materials.

We franchised people in various areas of the country to sell our products, and they could sell our products, seed and fertilizer, to the consumer for what the consumer would pay for competitive products and do all of the work at no additional cost.

Q Mr. Dorfman, are you a defendant in this lawsuit?

A No.

Q Were you at some point in time?

A Yes, I was.

Q And have you consented to the entry of a final judgment affirming an injunction?

A Yes, I did.

Q During 1974, did you sell any Lawn-A-Mat stock?

A I don't know if it was '74. I sold one thousand shares either in 1974 or early 1975.

Q Could you describe the circumstances surrounding that sale, sir?

A Yes. I received a call from, I believe it was, Norman Schreiber asking me if I knew anybody that had any stock for sale, and I believe kiddingly I said, "Yeah, I've got a million shares." And when I determined that he was serious, I refused to sell any.

I subsequently received a call from Milton Kean telling me that -- asking me how he wanted me to split up the shares that I had with him to deliver the 20,000 shares that I had promised to Schreiber.

I told him he was kidding. But, no, the men were serious. I refused to sell any.

When Kean got back and said that I had promised, and he was taking it seriously, I told him to give him a thousand shares.

Q Did Mr. Schreiber tell you for whom he worked, when he spoke to you?

A Well, I don't recall that he specifically told me at that time. But I knew, or believed, that he worked for E. L. Aaron & Company.

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Q At the time that you sold your stock, sir, had you ever heard of J. W. Weller & Company?

A No.

Q What is the current status of Lawn-A-Mat, Mr. Dorfman?

A It is in Chapter XI.

Q When did the company go into Chapter XI?

A January 23, 1976.

Q Mr. Dorfman, during the period from October of 1974 through September of 1975, was Lawn-A-Mat either manufacturing or planning to manufacture tractors or combines?

A No.

Q Was the company during that period manufacturing or planning to manufacture any sort of an automobile?

A No.

Q Was the company contemplating a listing on the American Stock Exchange?

A No, not to my knowledge.

Q Was the company acquiring or planning to acquire its chemical supplier?

A No.

Q Was the company acquiring or planning to acquire Majestic Seed Company?

A Well, there is no Majestic Seed Company, to my knowledge. Majestic Seed is a hybrid bluegrass, and Lawn-A-Mat did have the patent rights, owned the patent rights.

Q During that period of time was Lawn-A-Mat acquiring or planning to acquire or merge with Rainbird?

A There, again, is no Rainbird company to my knowledge. Lawn-A-Mat contracted with Melnor to have manufactured for it a large quantity of Rainbird sprinkler heads, which were packaged in our boxes.

Q At any time during that period was Lawn-A-Mat preparing a press release issue about the manufacture of a car?

A No, not to my knowledge.

Q During that period of time was Lawn-A-Mat acquiring or planning to acquire a fertilizer manufacturer?

A Not to my knowledge.

Q During that period of time was Lawn-A-Mat manufacturing or planning to manufacture any of its own products?

A Not to my knowledge.

Q During that period of time was Lawn-A-Mat planning to pay dividends?

A No,

Q During the period from October of '74 through September of '75, was Lawn-A-Mat's earnings improving?

A No. We suffered the largest loss in the history of the company and the only loss that we ever had through operations.

Q During that period of time was Lawn-A-Mat doing any work with a Japanese company in contemplation of building a car?

A No.

MR. MANDEL: No further questions.

*** CROSS-EXAMINATION

BY MR. HECHT:

Q Mr. Dorfman, in 1974 how many shares of stock of Lawn-A-Mat did you own?

A Something under a million. 800,000 shares.

Q And did that include stock that members of your family owned?

A No.

Q How many shares of stock did members of your family own?

A My son owns a substantial amount. I don't know the amount.

Q Would you say you had voting control?

A Yes.

Q And you had been involved with Lawn-A-Mat since the early 1960's?

A Since May of 1961.

Q And at one time wasn't the Lawn-A-Mat stock worth about $9 a share?

A Yes.

Q So on paper you were worth close to $10,000,000, at one time.

A Not quite.

Q Okay. Now, as the owner of voting control of a publicly held corporation, do you understand the importance of sponsorship for the over-the-counter stock of a company?

A Yes, I do.

Q Would you explain to the Court what the importance of sponsorship is?

A Well, sponsores, brokers will maintain the stability of the stock and the value of the stock.

Q And that is different than stock that is listed, isn't it?

A I'm sorry. Would you repeat the question?

Q Is that a different situation than stock that is listed on the New York Stock Exchange or the American Stock Exchange ?

A I would say so.

Q And would you also say that sponsorship is necessary for a meaningful market for the stockholders of an over-the-counter company?

A I believe it is.

Q And do you believe that it is important that an over-the-counter company maintain good relationships with the brokerage community?

A Yes.

Q When did you first meet Norman Schreiber?

A Some time in the late summer or fall of 1974.

Q Do you recall the circumstances surrounding this meeting?

A Yes, I do.

Q Would you please state them for the Court?

A We have a dealer, Howard Kaufman, who went bankrupt in another business, did very well in Lawn-A-Mat. He brought his brother-in-law, Sol Rosenwasser, into Lawn-A-Mat. He also did very well.

Schreiber was apparently a childhood friend of Rosenwasser, and he called me because Rosenwasser was-- and told him about the business and he knew it and he was interested in it.

He told me he was a stockbroker, he was interested in the company both as a company and as a potential-- well, as a stockbroker. And he told me that he would like to meet me, and subsequently we did have a meeting.

Q During that phone conversation, did he advise you who he was employed by?

A I don't remember.

Q You subsequently had a meeting?

A Yes, wedid.

jg:mg 2 D. Dorfman-cross

Q Do you recall when this meeting was?

A Where it was?

Q When and where?

A Some time in the fall, I believe, of 1974, at my office, at 153 Jefferson Avenue, Mineola.

Q Do you know who else was present at that meeting?

A I don't remember. It was fairly lengthy and people walked in and out.

Q Do you recall the substance of what was discussed at that meeting between you and Mr. Schreiber?

A Vaguely, yes. We discussed the company. I gave him the history of the company, including the ramifications of my attempt at an acquisition of manufacturing companies, and the complete history up to that point.

Q And during that meeting did you discuss the furnishing of the stockholders list of LAM to Mr. Schreiber?

A No, I didn't.

Q Did you subsequently discuss that with Mr. Schreiber?

A No.

Q Were you aware that the stockholder list was furnished to Mr. Schreiber?

A Not until some time after it was done.

Q Were you aware that the dealer and distributor list of the company had been furnished to Mr. Schreiber?

A At that time, no.

Q And this was the initial meeting you are talking about?

A That is correct.

Q Did you furnish Mr. Schreiber with the annual report of Lawn-A-Mat at that meeting?

A No, I didn't.

Q Did you furnish him with any documentation with respect to the company?

A If I did, and I don't recall, it would only have been advertising brochures and promotional material.

Q With respect to United, Starlight, Stellar and Coinmeco, which I believe was the situation which was referred to on direct, do you know when Lawn-A-Mat acquired those facilities?

THE COURT: No, it wasn't referred to on direct in any way. I don't remember anything at all about it. I remember hearing about it yesterday and the day before but not today.

MR. HECHT: My apologies.

Q Let me rephrase that.

In 1973, did Lawn-A-Mat acquire certain companies?

A Yes.

Q What were the names of those companies?

A United Stellar, Starlight Manufacturing Company, Coinmeco, Milcount Realty and Sheridan Realty.

Q Wasn't the purpose of the acquisition of these companies to obtain facilities for the production of automobiles and tractors back in 1973?

A Yes.

Q In these facilities was there a major plant out in Kansas City?

A Yes.

No, I'm sorry, it was Joplin.

Q And the plant in Plainview, how would you describe that?

A It was a very large, very well-equipped manufacturing facility.

Q And then did there come a time when there were problems in 1973 with respect to this concept of producing a car and a tractor?

A No.

Q In 1974 was there some litigation between you and the former owners?

A Yes.

Q And as a result of that litigation was a new arrangement worked out between Lawn-A-Mat and the prior owners of United Stellar, Starlight and the related companies?

A Yes.

Q Would you describe for the Court what that new arrangement was?

A Well --

Q In your words. I know it is very complex legally.

A It is a very complex situation. I'm trying - in 1974, after the deal fell through and we were in litigation, Mr. Discount and myself got together and determined that the best interests of all the parties would be served by going forward with what we had originally planned, and we made whatever-- took whatever steps were necessary to stay the litigation, and Lawn-A-Mat again was restored to its original position as owner of the plant, subject to the approval of the stockholders.

Q And did you personally take it on yourself to assume Lawn-A-Mat's position temporarily?

A Not at that time.

Q Later did you do that?

A Later I did, yes.

Q And you granted Lawn-A-Mat an option on your position for one year?

A Yes, I did.

Q And was it always your intention that if you went into the actual production of a car and a tractor that this would be for Lawn-A-Mat?

A Yes.

Q Now, during this period, during the latter part of 1974, do you recall who Carl Krantz was?

A Yes. He was the treasurer of the company. He is also my brother-in-law.

Q And do you recall that he sent out a news release to all of the distributors that Lawn-A-Mat had acquired these facilities?

A In 1974? No, I don't recall this.

Q Was it in 1975?

A I don't know.

Q But you recall there was a news release sent out?

A I don't recall specifically. I'm sure it was if you say so, but I don't recall it.

Q OK.

THE COURT: He hasn't said so and he is not testifying. But do you know of it?

THE WITNESS: I do not.

THE COURT: Very well.

Q Now, during this period, did you keep the distributors and franchise dealers fully advised of what youwere doing with respect to the proposed production of tractors and automobiles?

A Well, I always kept the distributors advised of what was going on with Lawn-A-Mat. But I don't think that I kept them advised wtih regard to the manufacturing plant, except that the training school for Lawn-A-Mat was located in the Joplin plant, so that all new dealers spent at least a week in the plant, and many of the old dealers and distributors came back for retraining, and I'm sure that they saw what was going on.

Q And in that plant you had a very large plastic molding machine, didn't you?

A We had the largest vacuum former in the world and the only automated vacuum former. The machine was capable of turning out a 20-foot boat, deck and hull, six-minute cycling time, one man. It was built for that purpose.

Q Did there come a time in the latter part of 1974 where you had put together what you felt were the right people and the parts to go ahead with this production, proposed production, of the tractor and the car?

A Sorry. What year?

Q The end of 1974.

A No, it was 1973, September 1973 we had everything ready to go.

Q And then there were some problems?

A Yes.

Q And then did there come a time subsequently when you had put things back together again?

A Not sufficiently to seriously consider a car, but definitely to build the Lawn-A-Mat equipment and the tractors.

Q And wasn't it a fact that the tractor and the car were very similar in their components?

A Yes, many of the components were similar.

Q Were a number of those components parts you had purchased from the old Crosley automobile manufacturer?

A Well, not quite. Crosley, when Crosley went out of business in the forties, they continued to make the mechanical components, transmissions, drive shafts, rear ends. The tractor that we used, the Economy tractor, is the Crosley just cut down, using all the mechanical components, and my thought was to start building tractors, which would be the basic component of the automobile, and expanded to a car, with a plastic body.

Q And this plastic body, could this have been produced on this machine in Kansas City?

A Yes.

Q And did you feel that with respect to the tractors that you were considering for production, that there was a significant market for those tractors?

A Yes. The Lawn-A-Mat use alone warranted the setup, set up of the assembly line, and there is sufficient market for other uses, too, to have made it, I believe, a highly profitable item.

Q And also this could be done in conjunction with the production of combines?

A Yes, because we needed one tractor for each combine.

Q The combine that you described, was that what you described in direct testimony as what made this particular industry possible?

A That is correct.

Q Now, with respect to the car, was this supposed to be a plastic body car?

A Yes.

Q Was it projected to retail at a price of approximately $1500?

A Yes.

Q Was this gasoline-powered by a 2-cylinder Onan engine?

A Yes.

Q Was it a low compression or a high compression engine?

A Low compression.

Q And what was the estimated miles per gallon?

THE COURT: Is all of this necessary?

MR. HECHT: Well, yes, because I think it goes, your Honor, to the direct testimony of what the representation --

THE COURT: The miles per gallon and everything else? I don't think that has anything to do with it.

The question is whether they were going to make a car or not, isn't it? What the compression ratio and what the size of the tires were, and the transmission, I don't think is relevant here one bit at all.

All right, let's proceed.

MR. HECHT: I will try to limit it, your Honor, and go elsewhere.

THE COURT: All right.

Q Was it always your intention that if and when this car was manufactured that Lawn-A-Mat would have the benefit of it?

A Yes.

Q And did you feel and state that the Lawn-A-Mat dealers and franchisees were a built-in national sales organization?

THE COURT: State to whom?

Q Let's say to the dealers and franchisees.

A I don't recall that I stated this specifically, but it is true.

Q Do you recall stating this to either Mr. Jacobson or Mr. Schreiber?

A No.

THE COURT: Would you say you did not state it?

THE WITNESS: No, I don't recall.

Q Do you recall a meeting at E. L. Aaron & Co. in the latter part of 1974 or the early part of 1975 with both Mr. Aarons?

A Well, I don't remember both Mr. Aarons. I do remember Peter Aaron.

THE COURT: What is the date of this?

MR. HECHT: Late 1974.

A I believe it was late 1974.

Q Late 1974?

A October or November.

THE COURT: All right.

Q Do you recall what was discussed at that meeting between you and Peter Aaron?

A Not specifically.

Q Did you show Mr. Aaron pictures of the car at that meeting?

A Probably.

Q Did you describe the car to Mr. Aaron?

A Probably.

Q And how did you describe the car to Mr. Aaron?

A Well, I told Mr. Aaron and whoever was there about Lawn-A-Mat, which was our primary purpose in meeting, and the subject of the acquisitions came up, and I believe at that time we had just reacquired our position, and I told him about my previous plans and whatever --

Q Do you recall any discussions with Mr. Aaron relating to the proposed production of a tractor?

A At that time, not specifically. But if we were talking I would have told him all of my plans.

Q Did you ever show pictures of these cars to Don Jacobson?

A Yes.

Q Did you ever describe the car to Don Jacobson?

A Yes.

Q Did you in fact invite Don Jacobson out to the facility in Plainview?

A Yes, but not for the car. At that time I wasn't contemplating building the car.

Q About how many times did Don Jacobson visit the facility in Plainview, to your knowledge, after January 1, 1975, until, let's say, through August?

A Possibly a half a dozen times or more.

Q Would you say it was at least once a month?

A I could say that, yes.

Q Did you ever show these pictures of a car to Norman Schreiber?

A Possibly at our first meeting, but I had very little contact with Schreiber, just a couple of times in 1974 and I don't think at all in 1975.

Q Do yourecall ever describing the car to Mr.Schrieber?

A I'm sure I did, yes.

Q Do you recall how you described the car to Mr. Jacobson?

A In terms of the events as they transpired, the history of Lawn-A-Mat, going through the acquisition, the purpose of the acquisition, the falling through and what position we were in at the time.

Q And it was a fair statement then that you were still contemplating building the car?

A At what time?

Q In 1975.

A No, I don't think so. I had hopes, but I don't think that -- I don't think so.

THE COURT: What?

THE WITNESS: I said I had hopes of building it, but I don't think I expressed them to anybody, and I don't think it was a reality.

Q In 1974 do you recall a dealer franchise meeting you attended at the Yale Motor Inn in the latter part of 1974?

A Where is the Yale Motor Inn?

Q New Haven, Connecticut.

A Only vaguely.

Q OK.

And do you recall at that meting you discussed the car and showed the pictures of the car to a number of franchise dealers and distributors who were there?

A No, no.

Q Is Mr. Bergquist a dealer and distributor of Lawn-A-Mat?

A He was a distirbutor. He nominally holds a dealership, but he is aligned with Erazo in some way, and he has not fulfilled any part of his contract since Erazo left the company.

Q But this was before Erazo left the company?

A Well, this was when Erazo first came in to the company; I introduced him to the dealers in Connecticut.

Q Is this the kind of a meeting that Mr. Bergquist or Mr. Dudics, another dealer, would have attended?

A Yes.

Q Do you recall a dealer franchise meeting in either the latter part of 1974 or 1975 at the Veterans Coliseum in Hempstead, Long Island?

A If there was, I didn't attend it.

Q Did you attend any meetings at the Veterans Coliseum?

A No.

Q Where did the dealers hold their meetings on Long Island when they came in?

A Any meetings that I called were at the Island Inn in Westbury.

Q Could the company have called a meeting otherwise than through you?

MR. MANDEL: Objection, your Honor.

THE COURT: Sustained.

Q Do you recall a meeting at the Island Inn in the latter part of 1974 or the early part of 1975?

MR. MANDEL: Objection, your Honor.

THE COURT: I think he has already answered it.

A No.

Q Do you recall a meeting in the late part of 1974 with Stanley Gordon and Mr. Clancy at the Plainview facility?

MR. MANDEL: Objection, your Honor. This seems to be irrelevant.

MR. HECHT: If you are putting in his deposition --

THE COURT: Please don't argue.

I will permit it.

A Not specifically, no.

Q Do you recall ever meeting Stanley Gordon at the facility in Plainview?

A Yes.

Q And do you recall discussing the car with him when he came there?

A Not specifically, but if he came to the plant, I'm sure I did.

Q Do you know who Eliezer Strauss is?

A Yes.

Q Who is he?

A He is a former National Lawn Service dealer who is now a Lawn-A-Mat dealer.

Q Do you recall having a meeting with him at the facility in Plainview where you discussed the car?

A No, I'm not on friendly terms with him and I have not spoken to him other than across a lawyer's desk for the last several years.

Q This goes back to 1974. Were you unfriendly with him then?

A No.

Q Do you recall now a meeting with him in 1974 in Plainview?

THE COURT: Did you understand? He said were you unfriendly?

THE WITNESS: Yes, I was unfriendly.

THE COURT: He said several years.

THE WITNESS: I thought you said was I friendly with him then. I'm sorry.

THE COURT: I thought you misunderstood.

Q With respect to the sale of your stock in November of 1974, did you sign a form 144?

A I'm sure I did. I don't recall specifically.

Q Do you know who completed the form and put in all the data?

A No, I believe I handled everything on the phone.

Q You were with Milt Kean?

A Yes.

Q And you are aware that Weller & Co. acted as your agent in the sale of the stock?

A Yes, I had no stockbroker at the time.

Q OK. And did Weller & Co. charge you a commission?

A I'm sure they did.

Q Do you recall what the net proceeds were that you received from the sale of this stock?

A $250.

Q At that time was Milton Kean the counsel to Lawn-A-Mat?

A Yes, he was.

Q Do you recall Milton Kean issuing an opinion letter or taking care of all the legalities so you could sell the stock without any problem?

A Not specifically, but I'm sure he did.

Q And to your knowledge did Milton Kean handle all of the transactions with the transfer agent with respect to the sale of your stock?

A Well, I have no personal knowledge, but I'm sure he did.

Q Did you handle them yourself?

A No.

Q With respect to the tractor, in the fall of 1974 or the first few months of 1975, did Lawn-A-Mat have immediate plans to go into production on the tractor?

A Not Lawn-A-Mat. I did.

Q OK. And how long would it have taken you to get that off the ground?

A Oh, we had our prototype built by May or June.

Q Of 1974?

A 1975.

Q 1975. What do you mean you would have produced them and not Lawn-A-Mat?

A Well, it is kind of confusing because up until-- I left the country in December of 1974. Up to the time that I left, I believe that Lawn-A-Mat was restored to its original position that Lawn-A-Mat owned all of these plants subject to the approval of the stockholders.

When I got back in February, I was told by both the accountant, Murray Spirgel, and Milton Kean, that the underlying problem still existed and Lawn-A-Mat couldn't either call a stockholders meeting or prepare consolidated statements, and we would have to operate the Stellar plant for at least another six months until the end of the fiscal year, which would be July.

At that time, in order to protect Lawn-A-Mat's position, I personally acquired an interest in the plants andgave Lawn-A-Mat the option to buy both mine and Discount's interest for what I paid for it.

Q Do you recall being examined before trial in my offices a couple of months ago?

A Yes, I do.

Q And do you recall that I asked the following questions, page 23, at the bottom, to put it in context:

"Q When you showed these pictures to these people, how did you describe this car?"

And this is the answer in the transcript.

"A In describing the reasons for the acquisition, getting back to 1973, I told them what my plans were at the time and, of course, when we were talking in 1975, they weren't as concrete as they were in 1973. But I described it. It is a story as it happened."

Is that the answer you recall to that question?

A I don't specifically recall, but it is the answer I would have given.

Q Have you had a chance to review this transcript?

A No, I did not.

Q Were you aware that it was delivered to your attorneys or to Milton Kean's office?

THE COURT: What difference does it make? He has looked at it.

Q Describe the story for me, would you please?

"A In 1972 I came back actively into Lawn-A-Mat and on analyzing the situation that existed there felt that we should acquire our own sources for manufacturing our equipment and formulating our chemical products. I was looking for a rather small plant and a large facility was brought to my attention. It was the ownership. It was up in the air. I worked it out. It was larger than anything I had contemplated, but on inspecting it, particularly the plant out in Joplin and the skills of the people involved, we certainly had the knowledge and skills for building our company. The tractors that we were buying we were buying a substantial number of them, and it was essentially an assembly job. It was very feasible and I planned immediately to go into production on a tractor. This tractor, all the parts were purchased. Many of the parts were components of the Crosley, and I planned to subsidize the manufacture of the tractor through production of the combines that Lawn-A-Mat was using, and using the profits from the combines and the tractors and Lawn-A-Mat's purchases would have been sufficient to make this feasible. The Joplin plant has an unusual piece of equipment. It is a very large one. It is designed to build boats. The machine is a vacuum forming machine and it is capable of turning out a 20-foot deck and hull eight minutes' cycling time. The machine was capable of turning out truck bodies and automobile bodies. After consultation with various engineers and people, other people, we felt we could produce, using essentially the components of the tractor, an automobile with a plastic body that could retail for in the area of $1,500."

Is that the answer you gave to that question?

A I am sure it is. If you asked me today I would give you the same answer.

Q And when you talk in terms of I and we, do you mean the company or yourself individually?

A At that time I was talking of Lawn-A-Mat.

Q And at that time how much did you estimate in time it would take to get into production on the tractor?

A Three months, three to four months. We are talking 1973.

Q Now, with respect to chemical facilities, besides the acquisition of chemical facilities, was Lawn-A-Mat ever contemplating developing its own chemical blending operation?

A Yes.

Q Did you discuss this with Fernando Erazo?

A Yes.

Q Did you discuss this with Mr. Jacobson or Mr. Schreiber?

A I don't think so.

Q Okay. Didn't these discussions occur in the latter part of 1974 and the early part of 1975?

MR. MANDEL: What discussions, your Honor?

MR. HECHT: Discussions relating to development of chemical blending by the company.

MR. MANDEL: With who?

THE COURT: He is talking with Mr. Erazo. That is what he said.

A No. As a matter of fact, in 1972 Lawn-A-Mat had gone pretty far toward acquiring plant products, one of its major suppliers, and we had reached an agreement in principal and the only thing that upset it is that I changed the timetable and acquired the manufacturing plants first and subsequently everything blew up.

b.2

Q Now, when did you first become aware of any complaints with respect to the activities of either Mr. Schreiber or Mr. Jacobson?

A Shortly after my return from the Orient, in February, I believe I got a call from Mr. --

THE COURT: This is --

THE WITNESS: '75.

THE COURT: '75.

THE WITNESS: I received a call from Mr. Jacobson and he was very, very upset, and it seemed that he had gotten a call from Nina Lane.

Q Who was Nina Lane?

A Nina Lane was either Erazo's secretary or assistant to the president or the assistant president, I am not sure.

Q When Mr. Jacobson called you, and you said he was upset, do you recall what he stated to you?

A Yes. He told me that she was abusive, that she was making wild statements, making wild accusations and he couldn't understand what she was saying.

Q Were one of those accusations that you were no longer associated Lawn-A-Mat?

A Yes.

Q And that you had no business speaking to anyone in E. L. Aaron & Company?

A Yes.

Q And was another of those statements supposedly from Mrs. Lane that you were no longer involved in the company in any way?

MR. MANDEL: Objection, your Honor, as to the relevancy of the conversations between Nina Lane and Mr. Jacobson.

MR. HECHT: I think it is the key. The key to your case, as I understand it, is she made certain complaints; they went to Mr. Erazo. This is what the testimony on direct is. He went to Mr. Kean and Kean went to Aaron & Co., and I think if someone else investigated those complaints, and at least tried to call the dealers, I think that is very relevant to find out if, in fact, they had any substance.

MR. MANDEL: Your Honor, it is the Commission's case that certain specific misrepresentations were made by Jacobson and Schreiber and it is that that we are concerned with, not any argument between

Jacobson and Schreiber and Miss Lane or Mr. Erazo.

MR. HECHT: I think you have got to get the complete picture of really what was happening.

THE COURT: I am not going to get the complete picture of Lawn-A-Mat from the year one up to today. We are here on a very narrow issue which is the question of whether or not false and misleading statements were made by Schreiber and Jacobson and whether or not there was an obligation on the part of Peter Aaron to do something with respect to any such statements, if they were in fact false and misleading, and that is all we are involved in.

MR. HECHT: Your Honor, I think there is one other issue. Assuming that they did make false and misleading statements, whether they did this intentionally.

THE COURT: Well, I don't know whether that is --

MR. HECHT: I think under the Bausch & Lomb decision and the SEC feels there are a couple of recent decisions, one in the First Circuit, that there is a question of whether or not for an injunctive action the SEC must establish intent.

THE COURT: Is this going to establish

that this witness told Jacobson that the information that he was giving out was in fact not false or misleading?

MR. HECHT: Yes, it will.

THE COURT: All right.

Q And, in fact, did you tell Mr. Jacobson that it was true that LAM was contemplating building a tractor and a car?

A No, I did not.

Q When Mr. Jacobson called you and he made these remarks, when he was upset and made these statements about Mrs. Lane, what did you say to Mr. Jacobson?

A I told him that I couldn't understand it, but I would stop at the office to speak to her.

Q And did you stop at the office to speak to her?

A Yes, I did.

Q And did you attempt to get the names of these dealers who were complaining?

A Yes, I did.

Q Isn't it a fact that she refused to give you these names?

A Yes.

Q And did you call up certain dealers on your own to find out what Schreiber and Jacobson were saying?

A Yes, I did.

Q And as a result of those calls did you conclude that there was no substance to her comments with respect to Jacobson and Schreiber?

MR. MANDEL: Objection, your Honor.

THE COURT: Sustained.

Q What were the names of the dealers you called, if you can recall?

A Howard Kaufman, Roy Popham. There were others; I can't think of their names.

Q Do you recall what was said by you and what was said by Mr. Popham when you called him?

MR. MANDEL: Objection.

THE COURT: Sustained.

MR. HECHT: Well, your Honor --

THE COURT: No, sustained.

MR. HECHT: Okay.

THE COURT: Call any of the dealers who have testified here? That's what is the issue here. I don't care what he said to some other dealer. What did he say to the ones who testified here.

Q Do you recall calling Mr. Bergquist?

A No.

Q Do you recall calling Mr. Dudics?

A No.

THE COURT: Did you call Mrs. Maniatis?

Q Did you speak with Mrs. Maniatis?

A Almost constantly. She worked in the office.

Q Did she ever state anything to you about Jacobson and Schreiber or even mention their names to you ?

A I don't think so. Not at that time.

Q Did you discuss Jacobson's telephone call with her, if youcan recall?

A No. I wasn't aware that she was a stockholder.

Q Pardon me?

A I wasn't aware that she was a stockholder, but she was within five feet when I was talking to Lane, Nina Lane.

THE COURT: Mr. Azzopardi, does that name mean anything to you?

THE WITNESS: No, it doesn't.

Q Did you attempt to verify on your own what Jacobson and Schreiber were saying to dealers?

A I don't think so, except that Jacobson denied that he had made any statements of the nature that Lane said he was making at that time, and I believed him.

Q And you believed Jacobson?

A Yes, I did.

Q Did there come a time when you heard of any other complaints after this set we have just been talking about?

A The first complaint was about Lawn-A-Mat manufacturing the car. That was in February. Several months later there was another complaint, and I just at the moment don't recall the exact nature of it.

Q Okay. Then was there a third complaint that came to your attention?

A Yes.

Q And did that also come from Mrs. Lane?

A Yes.

Q As a result did you discuss this with Mr. Jacobson and the two of you thought it would be a good idea to call a meeting?

A Well, I believe -- yes, essentially, I guess that is what happened.

Q Do you recall if there was a meeting between you and Mr. Jacobson and Mr. Kean and anyone else from the company?

A Yes.

Q To discuss this?

A Erazo, myself, Jacobson and Kean.

Q Was there anyone else present there that you can recall?

A No, I don't believe so.

Q Do you recall where the meeting was?

A At Mr. Kean's office at 60 East 42nd Street.

Q At that meeting was there a heated discussion between you and Mr. Kean about the car?

A No.

Q Was there a discussion about the car?

A No. About the tractor.

Q About the tractor?

A Yes.

Q What was the discussion about the tractor?

A Well, Mr. Kean insisted that -- now I recall, the second complaint was about Lawn-A-Mat building tractors and Kean said nobody is building a tractor. Nobody is building a car. Nobody is building anything.

And I told him, "That's not true. I am building tractors."

He said, "You are not building tractors."

"Well, I am building something."

"Well, you're not building tractors."

It is interesting, since he also had been to the plant several times and , you know, at the time, the last time that I specifically recall prior to this meeting that he was at the plant was in February, sometime late in February, and although we had nothing that was together that was a tractor, we had castings, parts, work was going on, and at that time I suggested that everybody come to the plant and see what we were doing.

Q Besides Mr. Kean having prior visits to the plant, isn't it a fact that Mr. ERazo had been out to the Plainview facility a number of times before April?

A Yes, yes, he had and subsequent to April also.

Q When Mr. Erazo came out there before April, did you discuss the car with him ?

A No. In 1974 and 1975 I wasn't seriously considering building a car and I didn't discuss it as a serious thing with anybody that came out. However, the combines, tractors, anything that Lawn-A-Mat was using, we did discuss we were building.

Q And did you discuss this with Carl Krantz in the latter part of 1974, the car or the tractor or both?

A The tractor, yes. The car, no. When I say the car, no, not in any serious vein.

Q Okay. Do you recall in your testimony on October 4 at your examination before trial the following questions and answers:

Well, let's go back to 25.

MR. HECHT: Your Honor, I will summarize this, and I think counsel will agree. On Page 25 we are talking about the automobile and the next question, going over on Page 26:

Q "Q Were the people at Lawn-A-Mat familiar with this concept of yours?"

A Yes.

Q And the next question was, "Would Mr. Erazo have known of this?"

A Yes.

MR. MANDEL: Objection as to the relevancy of the line of questioning, as to what the people at Lawn-A-Mat knew about the car. We are talking about Jacobson and Schreiber said to customers and whether they were, in fact, building a car.

MR. HECHT: I think it is relevant because you put Mr. Erazo and Mr. Kean on the stand and said that they knew nothing about a car, and here is a witness saying they did know about the car long before that meeting.

MR. MANDEL: My recollection, your Honor, is that they testified that Lawn-A-Mat was not building a car.

THE COURT: I will permit it.

Q I will read the questions and answers again.

"Would Mr. Erazo have known of this?

"A Yes."

Was that your answer then?

A Yes.

Q Would that still be your answer today?

A Yes.

Q "And Mr. Krantz"

"A Yes, they knew."

Would that be your answer today, too?

A Yes.

Q [Reading:]

"Q You" --meaning you, Mr. Dorfman -- "were pretty enthusiastic about this."

Your answer was: "Yes."

A Yes.

Q [Reading:]

"Q Did you feel that there was a substantial market for this in the United States?"

A Yes, again.

Q Now, was Mr. Erazo pretty enthusiastic about the car?

MR. MANDEL: Objection, your Honor.

THE COURT: Sustained.

Q Do you recall anything else that happened in this meeting in April in the office of Mr. Kean?

A Well, Jacobson denied that he had made statements that Lawn-A-Mat was building a tractor. He said, as I recall, that Stellar was building it and that Lawn-A-Mat had an option. He said he was stating the facts as he got them from ERazo, from myself, from the company.

He also said that Schreiber denied that he was making these statements. And Kean, I believe, told him to tell him, "Don't make statements like that," and he picked up the telephone, called up Schreiber, and kiddingly, I guess, said, "Don't make these statements."

Q Do you recall anything else that was said at that meeting?

A Not specifically. But it was quite a long meeting and --

Q Do you recall making a statement to Mr. Kean and Mr. Erazo, "Let's leave this meeting and go right out and visit the Plainview facility."?

A Yes.

Q And what was their response?

A I don't recall specifically what their response was, but it was agreed that we would meet not right then and there, within -- I thought it was the next day, but it might have been sometime later.

Q And did they in fact come out and see the facility?

A Yes.

Q And did you show them around the facility?

A Yes, I did.

Q And was Mr. Jacobson with them?

A Yes.

Q And can you describe to the Court exactly what the four of you saw at the facility?

A We saw two tractors completed, one large and one small, and component parts for ten more, and all of the jigs and fixtures set up to go into manufacturing on an assembly line.

Q That was for the tractor?

A For the tractor.

Q And did you discuss --

A Components for 50 combines in various stages of assembly.

Q And did you discuss this with Mr. Kean, Mr. Erazo and Mr. Jacobson?

A Yes.

Q And as a result of those discussions, was it your impression that there was no question that Lawn-A-Mat was building a tractor?

MR. MANDEL: Objection.

THE COURT: Sustained.

Q What did Mr. Erazo say to you during those discussions?

MR. MANDEL: Objection.

THE COURT: No. I'll permit it.

A I don't recall anything specifically that he said, and at that time we weren't talking too much anyway.

Q Do you recall what Mr. Kean said at the meeting?

A Yes.

Q Would you state for the Court what he said?

A "You are not building a tractor."

Q And what did you say to him?

A I said, "What am I building? What are we doing? What is this?"

He said, "You are prototyping a tractor," at which point I asked him to explain the fine legal distinction. It was lost to me.

Q And what was his answer?

A I don't recall.

Q You are involved with the Lawn-A-Mat Chapter XI proceeding, aren't you?

A Yes, I am.

Q And is Lawn-A-Mat expected to come out of Chapter XI and begin operations soon?

A Yes. We had a profitable year this year and we have just reached an agreement in principle with our creditors.

Q Okay. And when Lawn-A-Mat filed Chapter XI, didn't its assets exceed its liabilities?

A On paper, yes.

Q And the problem was a cash flow problem, wasn't it?

A Well, that was one of the problems.

THE COURT: Is any of this relevant to what we've got here?

MR. HECHT: They raised it on direct.

THE COURT: I don't care whether they raised it. Is it relevant?

MR. HECHT: I don't really think so.

THE COURT: All right. Then let's not get into it.

MR. HECHT: Your Honor, I'm looking for an exhibit.

[Pause.]

Q Did there come a time, in the summer of 1975, when there was a management dispute between you and Mr. Erazo?

MR. MANDEL: Objection.

THE COURT: I'll permit it.

A I would say yes.

Q Would you describe for the Court what transpired between the two of you on control of the company?

A Well, for some time prior to the summer it was apparent to me that Erazo was manipulating me out of the company and taking advantage of the situation as it existed. And I got a call from Nina Lane that I was to appear -- this was towards the end of the week, maybe a Thursday -- at Milton Kean's office at 9:30 on the following Tuesday morning because something of great import was taking place.

I refused to appear. I then got a call from Milton Kean telling me that I should be at his office because people were coming in from the west coast to refinance the company. I told him I wouldn't be there, this was not what was happening, that they were coming in -- that whatever was happening was just a maneuver to -- on Fernando's part.

Kean called several times after that, and up until -- and including the Tuesday morning of the meeting, and again I refused. I told him if there was anything of importance to the company that needed my signature, I could be at his office in an hour but I didn't believe this would happen.

At nine o'clock I got a call from Milton. At twelve o'clock he called me back, and I'll never forget his words: "It is worse than I thought. This is a conspiracy."

At which point I got on the telephone with the two lawyers from California, Refold & Steinerger, and agreed to meet them out on the Island. They asked me to come into the City. I told them I couldn't. And they told me that -- what they -- they were refinancing the company, they were interested in investing money, and it would be of great advantage to me.

I asked them if this was their only reason for being in town. They said no. I said, "Fine. Conduct your other business and then we'll get together at your convenience, another date.

They said, "Oh, no, we want to get together today."

I asked them if this business pertained to Lawn-A-Mat. They said yes.

I agreed to meet them at three o'clock at the Lawn-A-Mat office.

And I called in Stanley Essner, who at that time was a director and an officer of the company. I had him pick [illegible] at the station, introduce them --

Q Maybe I can stop you, because I think we want to get to the substance very quickly.

Who was in attendance at the meeting besides you and Mr. Essner?

MR. MANDEL: Objection, your Honor.

A They refused to meet me.

MR. MANDEL: Your Honor, I believe you ruled yesterday that this whole line of questioning, this whole area of the fight for corporate control is irrelevant to the issues at hand, and we would renew that objection.

THE COURT: I was going to only see whether it went to the credibility of Mr. Erazo.

I have a note here, Mr. Hecht, and I don't understand this, that says Mr. Green called from your office and said that there is going to be a reargument before Judge Knapp in Room 905 in five minutes; he doesn't think that you know about it.

MR. HECHT: No, I don't.

THE COURT: We are on trial here.

MR. HECHT: I can explain what the problem is, your Honor.

THE COURT: I don't understand the problem. You should have told Judge Knapp that you are on trial before me and expected to be here all day to conclude this case now.

MR. HECHT: I did.

THE COURT: What did Judge Knapp say?

MR. HECHT: He had made a stay with respect to the imposition of certain rules pending appeal, and the application was filed with the Court back in December. He scheduled a hearing on it yesterday afternoon at 4:45.

THE COURT: You said 4:15 to me yesterday.

MR. HECHT: We were up there at 4:15, but we got on the stand, I would say, at about ten of five, because he has a large narcotics trial and couldn't clear the room. We finished at about 5:15, whereupon he said he was denying all of the various motions and we should take our papers and go up and get a stay in the Court of Appeals.

I was in this morning and went up to the Court of Appeals. They said that since the motion term is not until the 18th of January, which is one day after the effective date, we should go back down to Judge Knapp. And I said he has already denied it. He said the appropriate thing is come up here.

I had my associate go down and check, and Judge Knapp apparently wants to hear from counsel on this.

I'm almost done. But he wants me there in five minutes. I didn't plan this and I didn't even know about it.

THE COURT: I know you didn't plan it.

MR. HECHT: And that's what it is about. It is about the regs on the commodity options.

THE COURT: I don't care what it is about. I am trying to run a trial here that had been set for some time. I certainly would have thought that you could have finished this yesterday. We quit at ten minutes to four because you didn't have anything to go. I can't waste time like that.

MR. HECHT: We were supposed to be in and out of this yesterday quickly. I know he has a large murder trial and he is carving out the time just for this, and I guess that is the time he set.

THE COURT: All right. Go up there. If there is any problem up there, come right back.

MR. HECHT: Okay. Will do, your Honor.

THE COURT: Will you tell him you are on trial before me?

MR. HECHT: Yes, your Honor.

[Recess.]

D. Dorfman-cross

MR. HECHT: Your Honor, please accept my apologies.

THE COURT: All right. Let's go.

BY MR. HECHT:

Q Who was present at this meeting in Mr. Kean's office from California?

A Well, originally I met with Refold & Steinerger and Stan Essner.

They refused to talk in front of Stan Essner, at which point I told them that this was obviously not Lawn-A-Mat business and we left the Lawn-A-Mat office, went to Stellar, where they gave me a proposition that I thought required witnesses.

I then recessed, and I accepted their -- told them I accepted their proposition but set up a meeting for the following day with Erazo, who, by the way, was supposed to attend the meeting with me and did not -- Erazo, Milton Kean, myself, Refold & Steinerger, and I asked Kean to have certain witnesses present.

We had Paul Weil, who is an attorney, we had Paul Cohen, who is an attorney, and we had Kean's secretary also there. Erazo did not show up.

MR. HECHT: Let the record reflect that I am handing to the witness a copy of Defendant's Exhibit G which has previuosly been marked for identification.

(Pause)

Q Have you reviewed that?

A I have looked through it and I read it when I originally saw it. I am familiar with it.

Q And is that a copy of the letter that you saw?

A Thatis a copy of the letter that Refold & Steinerger sent.

Q And does that summarize accurately what transpired during those meetings?

A No.

MR. HECHT: Your Honor, at this time I would like to move for the admission of that letter.

THE COURT: He said it is not accurate as to what happened at that time.

MR. HECHT: But it was a letter that he saw and it was received in the normal course of business. Relevancy is your weight to give to it, but this is a bench trial.

THE COURT: I know.

MR. MANDEL: I would like to know the purpose for which this is being offered in evidence.

MR. HECHT: I think it goes right to the

credibility of Mr. Erazo and what he was trying to do at the time and Mr. Dorfman's belief in what he was trying to do and why he was trying to do it.

MR. MANDEL: Well, Rule 608 of the Federal Rules of Evidence prohibit Mr. Hecht from attempting to impeach the credibility of Mr. Erazo through extrinsic evidence.

If he wanted to do it through Mr. Erazo, that was the time and place, not through Mr. Dorfman.

MR. HECHT: Well, since they were both officers of the same company and both had dealings with the participants in the alleged violation of 10b-5, I think the Court is entitled to know, because obviously they saw things differently, as it now appears from Mr. Dorfman's testimony. And really it boils down to which one should the brokers have believed.

MR. MANDEL: We refer your Honor to Rule 608(b) specifically.

THE COURT: I don't think 608(b) is relevant to this issue.

MR. MANDEL: It seems they are trying to show some specific action and conduct on the part of Mr. Erazo to impeach his credibility and they are trying to do it through extrinsic evidence offered through the testimony of Mr. Dorfman.

MR. HECHT: It was originally offered in the testimony of Mr. Erazo, and Mr. Erazo, though the letter refers to him, and apparently the lawyers he retained, denies, you know, any knowledge of it.

So maybe someone else has knowledge of it.

MR. MANDEL: One other thing I don't understand is we are offering a letter here that apparently does not represent what happened at the meeting and which Mr. Erazo-- I believe he said he didn't see, and Mr. Dorfman said, "Yes, I got a copy of it, but that's not what happened at the meeting."

What is this letter supposed to prove?

MR. HECHT: I think Mr. Erazo said he saw it but he wasn't actually in attendance at those meetings, only Mr. Dorfman was. I believe that was his testimony.

THE COURT: Under what theory is this letter being offered?

MR. HECHT: On two theories, your Honor: One is that I think it is relevant to the fact that Schreiber and Jacobson, under the fact, had the right to believe Mr. Dorfman and not Mr. Erazo. And basically it is credibility --

THE COURT: Then all we have got to determine is what did Mr. Dorfman tell Schreiber and Jacobson, that's all.

MR. HECHT: And that's what we have been through so far.

THE COURT: Then I don't think this is relevant to that. I'll exclude it.

Is it marked for identification?

MR. HECHT: Yes, it is.

Note my objection.

BY MR. HECHT:

Q Getting back to the complaints that were talked about before, do you recall being advised of or hearing about complaints by a Mr. Rumbo and a Mr. Pierce, who were dealers?

A No.

Q Do you remember furnishing testimony to the Securities and Exchange Commission?

A Yes.

Q And do you recall any discussion with respect to Rudy Pierce and Al Rumbo?

A I don't remember. I have spoken to Pierce and Rumbo any number of times. I don't recall speaking to them specifically with regard to this.

Q Did you ever speak to them with respect to their purchase of Lawn-A-Mat stock?

MR. MANDEL: Objection, your Honor.

THE COURT: Yes. Sustained.

Q I'm referring back to the testimony now that you gave before the SEC.

MR. MANDEL: Your Honor, if I may --

THE COURT: Yes. Sustained. That's not the way to do it.

Ask him a question. If there is anything contradictory, then that is what you use a deposition for.

MR. HECHT: This isn't a deposition.

THE COURT: I don't care what it is. If you are trying to get a prior contradictory statement, go ahead.

Q Is it now your testimony that you never mentioned anything to the SEC with respect to conversations with Mr. Rubmo and Mr. Pierce?

A No. I'm saying I don't recall. I might have. I just don't recall.

Q Do you recall any discussions with them relating to their purchase of Lawn-A-Mat stock through Mr. Erazo?

MR. MANDEL: Objection, your Honor.

THE COURT: Sustained.

Q Do you recall the SEC asking you that when you spoke to the dealers did you make inquiries as to whether Jacobson and Schreiber were making certain representations?

MR. MANDEL: Objection.

(continued on next page)

THE COURT: Sustained.

If you have got the ones who have testified in here, that is fine.

MR. HECHT: This doesn't relate to people who have testified.

THE COURT: That is all we are concerned with in this particular case. Whatever representations they may have made to other people is not relevant to the issues here.

Q Did there come a time when you engineered the firing of Mr. Erazo?

MR. MANDEL: Objection, your Honor.

THE COURT: Yes. Sustained.

Q Did Mr. Erazo attempt to purchase your stock?

MR. MANDEL: Objection, your Honor.

THE COURT: I will permit it.

A More or less he attempted to acquire my stock. I wouldn't call it purchase.

Q Was he willing to pay for it?

A No.

Q Did he say that this was required because the dealers would not put any money in the company unless you gave him your stock?

A Substantially that.

Q And as a result thereof did there become a disagreement where either you or Mr. Erazo had to leave the company?

A Well, that is not quite the way it happened.

Q How did it happen?

MR. MANDEL: Objection, your Honor.

THE COURT: I will permit it.

A Some time prior to the visit of Refold & Steinerger, it was apparent to me that Erazo was wrecking the company in order to acquire my stock. When I met with Refold & Steinerger and they told me that they had visited, personally visited 120 to 130 dealers, who would buy Lawn-A-Mat stock, anywhere from 1000 ot 10,000 shares each, providing I turned my stock over to Erazo and left the company , I knew this wasn't true. When I asked them how long they had known Erazo and how they had met -- "they were personal friends, going back many, many years" -- and in our initial conversation, I determined that this wasn't true and subsequently it turned out that Erazo had been furnished with these lawyers by Denny Goldstein, one of our distributors in California, and this whole thing was engineered by Erazo and a group of distributors, to wreck the company, take it over, and acquire my stock.

MR. MANDEL: Your Honor, I move to strike the entire answer.

THE COURT: Motion denied.

Q During that period, did you also become aware that Mr. Erazo was attempting to set up a chemical company on his own?

A Yes.

Q And do you know who he was setting this up with?

A There was a Bob Raden who worked for the company for a period of time, Warren Kaufman, who was Lawn-A-Mat's advertising agency for a while, a number of other people, a Deck and Den -

Q Let me ask you specifically. Was Mr. Bergquist one of these people?

A I believe so, yes.

Q Do you know if Mr. Dudics was one of these people?

A I don't know.

Q Was Mr. Dudics a franchise dealer of Mr. Bergquist?

A Yes.

Q And they were setting this up on their own, weren't they?

A Yes.

Q And what did you say to Mr. Erazo with respect to this?

MR. MANDEL: Objection, your Honor.

THE COURT: No, I will permit it.

A That this couldn't be done, it was against the interests of the corporation, but it really didn't make any difference, because Erazo was unavailable. You spoke to Erazo through Nina Lane.

Q Eventually Erazo was terminated as president of the company,wasn't he?

A Yes.

Q And do you know why he was terminated?

A Yes, because we had substantial evidence to believe that he was involved in a conspiracy with the lawyers and others to the detriment of the interests of the company, he had breached his employment agreement, he had retained counsel in his own interests, for his own hands, with corporate funds, and a number of other reasons.

He is being sued, he and the lawyers are being sued for conspiracy by the company.

Q And you in fact didn't institute that suit on behalf of the company?

A No, I was not with the company at the time it was instituted.

MR. HECHT: I have no further questions.

THE COURT: Let me ask a couple of questions, Mr. Dorfman.

You say you were president up until 1975?

THE WITNESS: Yes, your Honor.

THE COURT: When did you cease being president?

THE WITNESS: Well, in October of 1975 Erazo came in as chief operating officer, under the condition that he had complete authority. I was involved with other things.

THE COURT: You were involved with other things?

MR. MANDEL: I think there is a misunderstanding of dates, your Honor. That is all. He is saying in October 1975.

THE COURT: 1974.

THE WITNESS: I'm sorry, 1974.

THE COURT: October 1974. And you had nothing to do with the company?

THE WITNESS: Nothing.

THE COURT: Or the day-to-day operations of the company between October 174 until you assumed the office of president in 1975, is that correct?

THE WITNESS: That is correct.

THE COURT: During that period of time, between October 1974 and November of 1975 didn't you testify on direct examination that the company was not, Lawn-A-Mat was not planning to manufacture a tractor?

THE WITNESS: That is correct.

THE COURT: And it was not planning during that period of time to manufacture a car?

THE WITNESS: That is correct.

THE COURT: Do you know anything about whether or not it had prospects of sales of $5 million as of 1975, end of 1975?

THE WITNESS: Well, I heard Erazo --

THE COURT: No, did it have prospects, do you know whether or not it had any prospects of sales of $5 million in 1975?

THE WITNESS: Yes. If you take the gross volume of all of the dealers--

THE COURT: The dealers -- I'm saying Lawn-A-Mat itself.

THE WITNESS: Lawn-A-Mat itself? No.

THE COURT: No way?

THE WITNESS: No way.

THE COURT: What about the prospects of $25 million worth of sales in the next five years, Lawn-A-Mat itself?

THE WITNESS: Properly run, yes, I believe it could be done. But not the way it was being run.

THE COURT: It is fair to say that you had no contact with or no substantial contact with the day-to-day operations for that period of time that you were out, between October 1974 and December 1975?

THE WITNESS: No, your Honor, from October 1, 1974 to December 15, 1975, I had no day-to-day contact with the company.

THE COURT: When was your first disagreement or difficulty with Mr. Erazo?

THE WITNESS: Immediately on my return.

THE COURT: When?

THE WITNESS: About February 1, the first week in February.

THE COURT: Of 1975?

THE WITNESS: Of 1975.

THE COURT: You owned, as you say, voting control of the company?

THE WITNESS: Yes, I did.

THE COURT: You had the authority to discharge him, did you not, or call a meeting of the board of directors and exercise your rights?

THE WITNESS: I didn't have control of the board of directors. By the time I had gotten back from the Orient the board of directors was against me. Erazo had done a masterful propaganda job and the directors were convinced that if I had anything to do with the company, it would fold, and --

THE COURT: When is the annual meeting?

THE WITNESS: We didn't have one and I was told we couldn't have a stockholders meeting because we didn't have financials and a meeting couldn't be called, couldn't be called by anybody, by the president, and he wouldn't, and the corporate attorney agreed with this, and I just had to handle things in my own way.

THE COURT: You were not a director from the period of October 1974 to -

THE WITNESS: Yes, I was a director, I was one of three or four directors. I was outvoted on the board of directors and I was told that I could not call a stockholders meeting.

THE COURT: Where was Lawn-A-Mat incorporated?

THE WITNESS: In New York.

THE COURT: In what year, 1961?

THE WITNESS: May of 1961.

THE COURT: Do you have any further questions?

MR. MANDEL: Just a few brief questions.

REDIRECT EXAMINATION

BY MR. MANDEL:

Q I direct your attention, Mr. Dorfman, to the meeting in Mr. Kean's office in April of 1974.

At that time there was a discussion of a tractor, is that correct?

A Yes.

Q Mr. Kean said to you that Lawn-A-Mat was not building a tractor?

A Lawn-A-Mat was not building a tractor and nobody is building a tractor.

Q What did you say to him?

A I said, "I'm building a tractor, Stellar is building a tractor."

Q When you say "I," do you mean I, Dan Dorfman?

A I meant I, Stellar, Stellar Tool and Manufacturing Company.

Q At that point in time did Lawn-A-Mat own Stellar?

A I don't think so.

Q Didn't Lawn-A-Mat have an option to acquire the stock of Stellar?

A Yes.

Q And that option was not exercised at that time, was it?

A Well, no.

Q Was it ever exercised?

A No.

THE COURT: The board of directors would have had to exercise it, would it not?

THE WITNESS: The board of dirctors wouldhave had to exercise it.

THE COURT: At that time, in the condition you knew it to be, the board of directors had no intention or did they have any intention of --

THE WITNESS: Well, some time in about June of 1975 Erazo told both myself and Discount that he had no intention, that he would not exercise the option, Lawn-A-Mat would not exercise the option, nor would Lawn-A-Mat purchase any of the equipment, combine and tractors that we had built.

Q Mr. Dorfman, did you ever open an account at J. W. Weller & Co.?

A No.

Q Did you ever enter an order to sell stock through that brokerage firm?

A I sold a thousand, I'm not sure of what your question means but I did sell a thousand shares of stock.

Q Did you call anyone at J. W. Weller & Co. and ask them to sell Lawn-A-Mat stock for you?

A Not to my recollection, no.

MR. MANDEL: No further questions, your Honor.

MR. HECHT: I have two further questions. One I have to get a document.

THE COURT: All right. Fred Dorfman is?

THE WITNESS: My son.

THE COURT: Your son. Was he on the board of directors at the time?

THE WITNESS: He was on the board of directors until April of 1975, on the board of directors from about 1972 to April of 1975.

THE COURT: And he owned approximately 144,000 shares of stock?

THE WITNESS: At that time. I gave him a substantial amount of stock. I know he has been selling. I don't know how much.

THE COURT: He testified that he owned 144,000 shares of stock.

THE WITNESS: Owned or owns?

THE COURT: Owned.

THE WITNESS: I believe that is correct.

THE COURT: Who were the other directors?

THE WITNESS: Up until April of 1975, myself, Pat Lore, Carl Krantz, Fred Erazo and Fred Dorfman.

In April of 1975, Carl Krantz and Fred Dorfman resigned, leaving myself, Pat Lore and Erazo.

And some time in, oh, after that, Stanley Essner also became a director.

RECROSS-EXAMINATION

BY MR. HECHT:

Q Mr. Dorfman, are you aware that J. W. Weller opened up a new account application for you?

A No.

MR. HECHT: Your Honor, I would like to direct the Court's attention to Plaintiff's Exhibit 11, which is a new account card opened in November of 1974, signed by J. W. Weller, on the J. W. Weller & Co. new account application.

THE COURT: All right.

What do you want to do with it?

Q And in fact your stock was sold through Weller, wasn't it?

A Yes.

Q Do you know when Mr. Erazo originally became employed by the company?

A October 1; officially October 1, 1974.

Q And at that time was his title vice president?

A Executive vice president, yes, and chief operating officer.

Q And you were the president?

A That is correct.

Q When was Mr. Erazo elevated to the presidency?

A In April of 1975.

MR. HECHT: Thank you.

MR. MANDEL: No further questions.

THE COURT: All right. You may step down.

(Witness excused)

THE COURT: Next witness.

MR. MANDEL: Plaintiff calls the defendant Peter Aaron to the stand.

PETER E. AARON, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MANDEL:

Q Mr. Aaron, are you currently employed, sir?

A Yes.

Q With whom and in what capacity, sir?

A I am a special consultant for British American.

Q British American Commodities?

A Yes.

Q You say you are a special consultant.

What do you do as a special consultant?

A I am a consultant for British American, and my title is Special Consultant for Administrative Procedure.

Q I'm sorry, administrative what?

A Procedure.

Q What does that mean?

A I aid the president of the firm in the general running of the operation as far as administration is concerned.

Q Do you have an office at British American?

A Yes.

Q You partake in consulting on the sales techniques to be utilized by British American?

A Yes.

Q In the marketing of its product?

A Yes.

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Q Do you have any background in sales techniques to be able to do that?

A Commodity options, yes.

Q What is your background in that?

A I was at British American since the first day it opened up practically.

Q When was that?

A October.

Q Of what year, sir?

A October -- the fiscal year end was October this year, so the prior year.

Q Of '75 you mean?

A Yes.

Q Well, when you first commenced your employment as a consultant to British American were you giving the company assistance in its sales techniques?

A Not in the beginning, no.

Q How about in the marketing of its products?

A Yes, in one way, yes.

Q At that point in time did you --

A That was the preparation of the literature.

Q Were you employed prior to October of 1975, sir?

A By who?

Q Were you employed prior to October of '75?

A Yes, I was.

Q With whom, sir?

A E. L. Aaron & Company.

Q For how long?

A I am 33 now. Part time from when I was 16 till when I was 18, and full time from when I was 18 till my starting employment with British American.

Q By the way, when did you commence giving some advice to British American on sales techniques?

MR. HECHT: Your Honor, note my objection on the relevancy.

THE COURT: Yes. Sustained.

Q Do you own any stock in any corporations at this time, sir?

A Yes.

Q Do you own any stock in any public corporations?

A Yes, I do.

Q How many different corporations is that?

A Public corporations, one.

Q Any private corporations?

A Yes.

Q How many?

A Three.

Q That stock in the three private corporations is all unregistered, is that correct, sir?

A Yes, it is.

Q How about in the public company?

A It is registered stock.

Q Do you own any unregistered stock in any public companies?

A Not to my knowledge, no.

Q While you were employed at E. L. Aaron, Mr. Aaron, could you please tell us what your responsibilities were there?

A I was the assistant president of E. L. Aaron. My general duties were the keeping of due diligence files on all the stocks that we made markets in, the liaison between the cage, the registered reps and the trading room. I also handled any new issues that we participated in and I did private placements.

Q You said the cage, sir. Could you tell us what you mean by the cage?

A Operations department.

Q You also mentioned due diligence files. Could you tell us what you mean by that?

A A financial on any particular public company.

Q And those files were maintained in connection with securities which were traded by E. L. Aaron & Company?

A Yes.

Q Were you a registered representative with the firm, sir?

A Yes, I was.

Q And when did you become a registered representative with the firm?

A Approximately eleven years ago.

Q Who is the president of the firm ?

A The president of the firm was Edward Aaron.

Q And you are related to Mr. Edward L. Aaron?

A I am his son.

Q Were there any other officers of the company?

A No, there were not, not in that time frame. My mother was.

Q Well, okay, let's restrict ourselves, if we can, just for clarity, to the period from October of 1974 to September of 1975.

During that period were there any other directors?

A No.

Q Were there any directors?

A I think my father was a director, but I don't know.

Q Do you know if there were any other directors?

A I don't think so, but I am not positive.

Q Who are the stockholders of the firm?

A My father .

Q How many employees did the firm have during that period of time?

A During what period of time?

Q During the period from October of 1974 through September of 1975.

MR. HECHT: Objection. Would you clarify total employees or employees at any one time?

A It's a difficult question to answer because --

Q Did the number of employees change?

A Because the firm was in a period where it expanded and where it contracted, so I don't know what isolated period of time you are asking.

Q What was the largest number of employees it had during that period?

A Approximately 50 people.

Q What was the smallest number of employees you had during that period?

A One.

Q When was that, that it had one employee?

A Approximately in October '75.

Q Who was that employee at the time?

A Edward L. Aaron.

Q When did you leave the firm, sir?

A October '75.

Q Immediately prior to your leaving the firm how many employees did the firm have?

A One.

Q Immediately prior to your leaving of the firm were you not employed with your father?

A Yes.

Q Anyone else at the present moment, immediately prior to your leaving the firm?

A Yes, maybe one more.

Q What was the largest number of registered representatives that E. L. Aaron had during this period?

A Full time or part time?

Q Let's start with full time.

A 25 approximately.

Q 25?

A Approximately.

Q How about part time?

A Approximately 15.

Q And were you compensated at E. L. Aaron, sir?

A Yes, I was.

Q How were you compensated?

A I was paid $200 a week salary for part of the period of time, which was eventually changed to $300 a week. I had credit cards, my bills were paid, approximately $1,000 a month.

Q What sort of bills?

A Bills that were mostly related to business, $1,000 a month. There would be meals mostly.

Q Any other compensation you received?

A During the period I might have received a bonus check of $3,000, but I don't remember one way or another whether it was during that period or not.

Q Any other compensation, sir?

A Not to the best of my recollection.

Q Was your rent paid by the firm?

A Oh, yes, it was.

Q Were your telephone bills paid by the firm?

A Yes.

Q Any other compensation, sir?

A I can't remember anything else.

Q Did E. L. Aaron & Company pay the rent of any other employee of the firm?

A They might have, of my father.

Q Anyone else?

A Not to my knowledge. I don't remember.

Q Was Edward Aaron compensated?

A Yes.

Q What was the nature of his compensation

A I know he received a salary check. I don't know the exact amount.

Q Was it comparable to your salary check, sir?

A I imagine so, yes.

Q Did you have any financial interest in the firm of E. L. Aaron & Company?

A I wasn't an owner of E. L. Aaron & Company.

Q Was the firm in any fashion indebted to you?

A Yes. My mother had died approximately four years prior and in her will she left me a subordinated loan to the company.

Q How much was that subordinated loan?

A $50,000.

Q Did the firm have any other subordinated debt?

A No, it did not.

Q Was that loan eventually paid off?

A Yes, it was.

Q When?

A Approximately July of that year.

Q 1975?

A Yes.

Q Could you tell us, Mr. Aaron, what you did as the liason between the cage and the registered representatives ?

A Yes. E. L. Aaron was a very different kind of brokerage firm inasmuch as the sales representatives of the brokerage firm were permitted to trade and position securities. What we would do is, my father would have me monitor the reps as to their having customers' funds come in on time, checking with the representative if my father saw that he was over positioning, was positioning more stock than he could or was capable of selling, and at the end of the month he had me go around to the sales representatives or he would , or both of us would call in an individual representative and show what his production figures had been, and I guess that's about it.

Q And did you ever show production figures to any registered representatives in the absence of your father?

A I very well might have.

Q Did you have any responsibility with respect to the due diligence files for securities being traded by the various registered representatives?

A Let me put it to you this way: We had a manual trading card in the office. There was a check list next to that. If a due diligence file was kept in the firm, there would be a check mark next to it. If there was not a check mark next to that stock, then my father would tell me to get the rep, and the rep would come in and either he would tell him or I would tell him to get a due diligence file that was current or he would have to stop trading the stock.

Q Did you have any responsibility for the hiring of registered representatives?

A Hiring them, [illegible] Pre-screening them, yes.

Q Well, do you want to explain to us just what you mean by that, please?

A Well, I was my father's assistant, and he had only a certain amount of time in a day, and what I had to do is I had to go through each one, when a proposed rep would come in, not all the time, but a lot of times I would go in, I would go and check out the individuals' qualfications, because I had worked for my father since I was 16, I had a feel of what his desires were, and if there was someone who just wasn't in any way qualified, I can save my father a lot of time.

Q Did you give any advice on hiring, after having pre-screened these registered reps, did you then discuss it with your father?

A Yes, I usually would.

Q Was a registered representative ever hired by E. L.Aaron & Company without seeing Edward Aaron?

A I imagine so. I don't remember a specific instance, but I imagine it would happen.

Q And who would he see if he had not seen Eddie Aaron?

A He would see me, but let me go further, but it was not my responsibility at all to sign any NASD form, and before that NASD form was signed, my father asked me the information about that rep.

Q Mr. Aaron, the registered representatives were allowed to position securities on behalf of E. L. Aaron, is that correct?

A Yes, they were.

Q What would that mean, position securities on behalf of E. L . Aaron ?

A Just what it says, position securities on behalf of E. L. Aaron.

Q To buy and hold on behalf of E. L. Aaron?

A Yes, to buy and inventory with the idea of subsequently selling it.

Q Did you have some responsibility with respect to the positioning of these securities?

A I was a monitor of the security position.

Q What do you mean, monitor?

A I would look at the amount of the dollars, the particular worth of a position, that a particular rep had a position, and if it was over his amount or qualifications to sell that security subsequently, I would tell my father, my father would either go or send me to go and talk to the rep or sometimes he would talk to him himself. Mostly he would send me, though.

Q Now, as there a dollar limit for each registered rep as to how much he could position?

A There was not a fixed dollar amount for each rep.

Q Did it relate to his capacity to sell the securities?

A Excuse me? Yes, it was directly related to his capacity and it was a question of opinion.

Q Who made that determination?

A Mostly my father.

Q What happened if a registered representative had trouble selling his position?

A In E. L. Aaron & Company a registered rep was allowed to make a market in a stock. He participated on a fifty-fifty basis with a spread in that stock. If during that period of time that he was selling the security, if he wanted another rep to sell part of his position, he could take his 50 per cent and divide it with another rep to help him sell the stock.

Q Well, how about if either yourself or your father determined that this registered representative was having trouble selling his position, what happened in that instance?

A Usually we would sit down and talk to the rep, and tell him to take care of it and if he said he could not take care of it, we would ask him would he like us to go and talk to other representatives, to help them put away the position.

Q And did you in fact do that?

A Yes.

Q While you were at E. L. Aaron & Company, did you supervise anyone?

A In my estimation, no.

Q Were there any other assistants at the firm, either assistants to you or assistants to the president?

A Yes.

Q How many?

A There were two assistants, but they only overlapped themselves about a week, a week and a half, so I would say really one.

Q Who supervised them?

A It was jointly between my father and myself. They were not doing anything that was other than of a clerical nature or researching the securities. It was not -- they were not selling.

Q So you did have some supervisory responsibility at least with respect to these two assistants, is that correct?

A It was miniscule --

Q Is that correct?

A I don't think so; not entirely, no.

Q You did not have supervisory responsibility for these people?

A Let me put it to you this: If I asked them to go get a financial on a particular company, they would get the financial on it. But it wasn't my responsibility to go and watch their every moment, no.

Q Do you recall, Mr. Aaron, testifying at the Securities and Exchange Commission on October 2, 1975?

A On what date?

Q October 2, 1975.

A From what I understand, it is August 27, 1976 was the time.

Q No, sir. I'm not referring to the examination before trial in this matter. I am referring to testifying at the offices of the Securities and Exchange Commission during the investigation leading to the commencement of this action.

MR. HECHT: I would like to object to the relevancy.

THE COURT: What is the question?

MR. MANDEL: Does he recall testifying.

THE COURT: We'll let that go in.

A I'm not recalling the specific instance.

THE COURT: He asked you if you remember

if you did testify before the Securities and Exchange Commission.

THE WITNESS: I don't remember this instance.

THE COURT: You don't recall testifying before the SEC?

THE WITNESS: Not in this period of time. May I see the paper, to recall it, sir?

Q Let me show you a copy of a transcript of the testimony of Peter E. Aaron dated October 2, 1975 and see if this refreshes your recollection, sir.

A Yes, I remember it.

Q Do you recall being asked at that time whether you supervised anyone at E. L. Aaron?

A I don't recall specific question, no. Would you please read it back to me?

Q Let me ask you if you recall this, sir. Do you recall being asked the following question and giving the following answer:

"Q Did you act in any supervisory capacity at E. L. Aaron?

"A On advice of counsel, I refuse to answer on the ground it may tend to incriminate me."

A I remember the answer better than I remember the question.

Q Who was responsible at E. L. Aaron --

MR. HECHT: I would like to move to strike. He did give extensive testimony before the Commission.

THE COURT: No. I am asking whether or not , if you were asked the same question now, you would give the same answer.

THE WITNESS: I would not,your Honor.

MR. MANDEL: May I proceed, your Honor?

THE COURT: Yes.

Q Who was responsible at E. L. Aaron & Company for maintaining the due diligence file on Lawn-A-Mat, sir?

A I was responsible for having the current due diligence file, which was the 10K or 10Q or a financial, income statement and a balance sheet for the companies that we traded, and I was responsible to the extent that, if it was missing, I had to fill it in, no more, no less.

Q I am asking you specifically about Lawn-A-Mat, sir.

A I'm telling you specifically about Lawn-A-Mat. I was not responsible for it and I was responsible to fill the information if it was missing. I was not responsible for the due diligence file or the maintenance of it. I was responsible to see that there was one there.

Q During the period from October of 1974 to September of 1975, did E. L. Aaron & Company maintain a current due diligence file on Lawn-A-Mat?

A To the best of my knowledge, yes.

Q At E. L. Aaron & Company,who had authority to sign checks?

A My father, George Plave, the cashier, and, since I was one of the original cashiers at E. L. Aaron & Company, myself.

Q Did a check --

A I had had that authority since I was sixteen .

Q Did a check require more than one signature, Mr. Aaron?

A It did not.

Please excuse me. Mr. George Plave did not have authority to sign checks.

Q The only members of the firm that did have was yourself and your father, is that correct?

A My father and myself, yes; and my mother before me, and my sister also.

Q You indicate you have a sister, is that correct?

A Yes.

Q Mr. Aaron, did you expect to inherit complete ownership and control of E. L. Aaron when your father retired?

A Let me put it to you this way: I had no way of knowing if there was going to be an E. L. Aaron & Company.

Q Would you please answer the question?

A I think so, yes.

Q What did --

A In fact, if I can go one step further, I wanted to give it to my son.

Q What did Eddie Aaron do at the time, Mr. Aaron?

A My father was the president and chief operating officer of E. L. Aaron & Company.

Q What did he do there? Every day, what did he do?

A Supervised all reps, the cage, all people working for him. He had professionals working for him. He used them.

Q When you say he supervised the reps, tell us what he did.

A And he was on a trading desk himself, because that was the life blood of the business.

Q How often during the day was he on the trading desk?

A All day, with the exception of the time when he would go and get up and walk around and check things out. He would be in the cage, he would be talking to people at which time I would take over his trading or his assistant would take over his trading for him.

Q What percentage of the time did he spend on the trading desk?

A I would say most of it, but not all of it.

Q During the period between October of 1974 and September of 1975, how many stocks were being traded by E. L. Aaron & Company?

A What were the dates?

Q October of 1974 and September of 1975.

A Anywhere from 30 to 90 stocks, depending on what time fram e you are alluding to.

Q Of those stocks, how many were being traded by Eddie Aaron?

A Well, I should define who was trading it and how trading was happening.

The market would be arrived upon by the rep and my father together. So my father would usually lay out most of the market in most of the securities.

Q Did Eddie Aaron have his own stocks that he was trading?

A Yes.

Q How many did he have in that period of time?

A Anywhere from -- this is just -- all I can do is guess, and I would imagine anywhere from 10 to 40 stocks.

Q Were there ever sales meetings held at E. L. Aaron & Company?

A Not full, formal sales meetings, no.

Q Were informal sales meetings held?

A Not sales meetings, no; not all sales meetings. Meetings, yes.

Q Some sort of meetings in which the registered representatives attended?

A Yes. Not all, but yes.

Q Not all of the reps.

A No.

Q But some of the reps.

A Yes.

Q Did you ever give any advice to those registered representatives who attended those informal meetings?

A Well, in the context of the scope of what I did, yes, which was when a rep could go and had over-positions or someone had not paid for his securities and he needed help of another rep to get him out of his dilemma, yes, I would, on instructions of my father.

Q Now, Mr.Aaron, you do recall, do you not, testifying at the Commission, the SEC, on October 2nd, 1975?

A I do.

Q Do you recall being asked the following question and giving the following answer:

"Q I don't know if it has been asked before, but did you tell us what your position is at E. L. Aaron?

"A On advice of counsel, I refuse to answer on the ground it may tend to incriminate me."

A Yes.

Q Between November of 1974 and August of 1975, Mr. Aaron, did E. L. Aaron & Company make any market in Lawn-A-Mat?

A Yes, it did.

Q During that period were customers of E. L. Aaron & Company being solicited to purchase

Lawn-A-Mat stock?

A Yes, they were.

Q Could you describe the circumstances under which E. L. Aaron & Company became a market maker in Lawn-A-Mat stock?

A To the best of my recollection, Norman Schreiber talked to , I think it was, me or my father or both of us, I don't remember which, about that he would like to go and trade Lawn-A-Mat, and I don't remember whether he came in with a financial or he subsequently sent one in or had one sent in. He said that he was interested in the company.

Both my father and I were familiar with the name of the company. It was a very well known company for lawn care. It was a reporting company. It had a 10K, it had a 10Q.

Q Now, did E. L. Aaron & Company ever participate in the sale of any stock pursuant to Rule 144?

A Are you referring to Lawn-A-Mat or are you referring to any stock?

Q Any stock, first of all.

A Yes.

Q And did E. L. Aaron & Company participate--

A But only on the stocks and we did not --

we did not make a market in, usually.

Q What about the stocks you did make a market in?

A In my estimation, no, unless we would go out of the sheets and stop trading it for a period of time.

Q Do you know whether E. L. Aaron & Company ever had an arrangment with J. W. Weller & Company whereby E. L. Aaron & Company referred a seller of stock pursuant to Rule 144 to Weller & Company?

MR. HECHT: Objection to the form of the question.

THE COURT: Rephrase it.

Q Do you know whether anyone at E. L. Aaron & Company ever referred a seller of stock pursuant to Rule 144 to J. W. Weller & Company?

A It is probable. Do I know definitely? I really do not recall, but it is probable.

Q Did such a situation ever occur whereby E. L. Aaron & Company refer a seller of stock pursuant to Rule 144 to J. W. Weller & Company, who executed the sale and sold it directly to Aaron & Company?

A I've read the testimony that you have.

Q Would you please answer the question?

I'm asking you whether you know that that happened.

A It is probable that it happened, yes.

Q Did you ever discuss any such arrangement with J. W. Weller personally?

A It is very interesting because --

THE COURT: No.

THE WITNESS: May I --

THE COURT: Did you ever discuss that question with Weller personally?

THE WITNESS: No, I did not.

Q Do you recall testifying in an examination before trial --

A I know there is a difference in the testimony. I asked -- I said that it was probable --

THE COURT: It would be helpful if you just listened to what he asks and then respond to his questions.

THE WITNESS: Yes, your Honor.

Q Do you recall testifying in the examination before trial on August 27, 1976? Do you recall that?

A Yes.

THE COURT: He does.

Q Do you recall being asked the following question and giving the following --

A Would you please give me the page? Because I have it.

Q Page 73 of that testimony.

A What line?

Q Beginning on Line 17. And if counsel would permit, I'll summarize.

We were discussing an arrangement of the type just discussed, leading into this question.

MR. HECHT: And you'll note there in that examination that I objected to the form of the question.

THE COURT: Let's not have any discussion of it. Let's have the question asked.

Q Line 17:

"Q Isn't it a fact that you discussed that situation with Weller personally, that you made the arrangement to repurchase the stock?

"A If I did, I don't remember the specific date or specifically doing it. But it is probable."

Do you recall that?

A Yes. I also asked John Weller afterwards, and John Weller said that I did not.

MR. MANDEL: I move to strike that.

THE COURT: Yes. Motion granted.

Q Mr. Aaron, did you ever have an arrangement with respect to Lawn-A-Mat whereby E. L. Aaron & Co. prearranged purchases back from brokers to whom you had referred sellers of Rule 144 stock?

MR. HECHT: I object to the form of the question.

THE COURT: I'll permit it.

A In reference to what particular stock?

Q Let's do it with respect to any stock.

A It is probable. But I don't remember the specific instance.

Q Did you ever have such an arrangement with respect to Lawn-A-Mat?

A I personally? No.

Q Do you know if there was such an arrangement?

A I imagine there was.

Q In connection with the sale by Dan Dorfman and Fred Dorfman of Lawn-A-Mat stock, was Weller & Co. used as an intermediary?

A I did not know that Dan Dorfman or Fred Dorfman's stock was sold through Weller. I knew that stock was sold through Weller & Co., but I didn't know whose it was.

Q In connection with the sale of any Lawn-A-Mat stock, was Weller & Co. used as intermediary?

A Would you please define what you mean by an "intermediary"?

Q Let me ask you this, Mr. Aaron.

THE WITNESS: Please excuse me for hedging, your Honor, but--

Q Do you recall filing an affidavit in opposition to the plaintiff's motion for a preliminary injunction in this matter?

Do you recall signing --

THE COURT: Show him the affidavit.

(Pause)

THE WITNESS: Yes, I recall.

Q And you read that affidavit prior to signing it?

A Yes, I did.

Q Was that affidavit accurate?

A I don't remember the contents of it now, so I don't know.

What in particular are you going into?

Q At that time do you remember it being accurate when you signed it?

A I thought it was.

Q Do you recall stating in Paragraph 24 --

A May I have it?

Q I would like to read it now. I'll be glad to show it to you.

THE WITNESS: Is there another copy of it?

MR. HECHT: He will read it to you and then show it to you.

THE WITNESS: OK.

Q (continuing) --"that there was a valid business purpose in utilizing Weller & Co. as an intermediary"?

It goes on from there. But is that accurate? Was Weller & Co. used as an intermediary in connection with the sale of Lawn-A-Mat stock?

MR. HECHT: I would like to object to the form of the question.

THE COURT: No. Overruled.

A Let me put it to you this way.

Q Would you please answer yes or no?

A It can't be answered by a yes or no.

May I go further?

THE COURT: No. Just confine yourself to the question that has been asked. If you do, we will get along much quicker.

Q Mr. Aaron, in connection with the sales of Lawn-A-Mat stock by Dan Dorfman and Fred Dorfman, did anyone at E. L. Aaron & Co. inquire as to the length of the time that the Dorfmans owned the securities?

MR. HECHT: I would like to object to the form of the question.

THE COURT: There is nothing wrong with the form of the question.

MR. HECHT: The relevance.

THE COURT: Relevance is something else.

MR. MANDEL: Your Honor, what we are concerned with here is a sale of stock pursuant to Rule 144.

THE COURT: I understand.

MR. MANDEL: I want to know if anyone at E. L. Aaron & Co. conducted any inquiry with respect to the sale of that stock.

THE COURT: Ask him that.

MR. MANDEL: I was going to break it down, your Honor. I was trying to make it simple, if I could.

THE COURT: Ask a direct question. If you don't get a direct answer, then you can break it down.

MR. MANDEL: OK.

Q Mr. Aaron, in connection with the sales by Dan Dorfman and Fred Dorfman of Lawn-A-Mat stock, did anyone at E. L. Aaron & Co. conduct any inquiry -- strike that.

MR. MANDEL: Your Honor, I would like to know specifically the nature of the inquiry conducted.

THE COURT: Ask him that.

MR. MANDEL: OK.

Q In connection with the sale of Lawn-A-Mat stock by Dan and Fred Dorfman, did anyone at E. L. Aaron & Co. conduct any inquiry?

A I did not.

Q Do you know if anyone at E. L. Aaron & Co. conducted any inquiry?

A I have no knowledge of whether it was or whether it was not.

Q I refer you, Mr. Aaron, to your answering affidavit in this matter, paragraph 20, and it reads as follows:

"That in connection therewith" -- "therewith" meaning the sale of Lawn-A-Mat stock -- "the company inquired" -- "the company" being E. L. Aaron & Co. -- "as to the length of time that the Dorfmans owned the securities, the number of shares of Lawn-A-Mat common stock outstanding, the relevant trading volume, the current status of its reports filed with the SEC, that the Dorfmans had made no other arrangements to sell their stock,and that the company would only receive a normal brokerage commission."

Now, you swore that some inquiry was conducted.

Does that refresh your recollection as to whether anyone at E. L. Aaron & Co. conducted an inquiry?

A I did not.

Q Do you know whether anyone did?

A I don't know.

Q In connection with the sales of the Lawn-A-Mat stock by Dan and Fred Dorfman, did you engage in any discussions with anyone to the effect that E. L. Aaron & Co. would only receive a normal brokerage commission?

A I did not know that Dan Dorfman or Fred Dorfman's stock was being sold. I just didn't know that their stock was being sold. I knew that Lawn-A-Mat stock was being sold, but I didn't know whether theirs was being sold.

Q Did E. L. Aaron & Co. purchase and sell Lawn-A-Mat stock solely on a principal basis?

A To the best of my knowledge, yes.

Q Did you ever hear of Don Jacobson?

A Yes.

Q Was he employed by E. L. Aaron & Co.?

A Yes.

Q When?

A Approximately the period of time that the Long Island office was open. I don't know the specific dates.

Q Can you approximate them?

A To be honest with you, it has been a while now, so I would imagine he was employed for about an eight-nine month period.

Q Was it approximately from November of 1974 through August of 1975?

A Approximately.

Q Did you ever hear of Norman Schreiber?

A Yes.

Q Was he similarly employed by E. L. Aaron?

A Yes.

Q During the same period?

A Yes. And he was employed prior to that period, too.

Q By E. L. Aaron?

A Yes.

Q How long prior to Jacobson's coming into the firm was Schreiber employed at the firm?

A I can only approximate it, but I would imagine about two months.

Q You were aware, were you not, that Jacobson and Schreiber were soliciting purchases of Lawn-A-Mat stock?

A I was sitting on the trading desk, seeing trades going on in Lawn-A-Mat. So I would have to know.

THE COURT: Just answer the question.

THE WITNESS: Yes.

Q Were you aware that Schreiber and Jacobson obtained a list of Lawn-A-Mat shareholders?

A Yes.

Q Was it usual procedure at E. L. Aaron & Co. to obtain a shareholders list from companies whose securities were being retailed by E. L. Aaron & Co.?

A Yes, it was customary.

Q Do you know how Jacobson and Schreiber contacted the customers of E. L. Aaron & Co. in connection with the solicitation of purchases of Lawn-A-Mat stock?

A I don't know directly, but I have a good idea how they must have.

Q Was a form letter used?

A Most probably, yes.

Q Did you ever hear of Andrew Dorman?

A The name is not familiar to me.

Q Was he ever employed by E. L. Aaron & Co.?

A I don't remember him.

Q Do you know whether Jacobson and Schreiber had a list of the Lawn-A-Mat dealers?

A I seem to remember them talking about it, but I don't know whether they subsequently got the list.

Q Did you ever receive any complaint about the activities of Jacobson and Schreiber?

A Yes.

Q From whom was that?

A Milton Kean.

Q Approximately when was that?

A I don't know the exact date, but it was the time period with approximately six, seven months between them.

Q There were two calls?

A Yes.

Q And do you recall the first call coming in approximately April of 1975?

A I don't recall the specific date.

Q How did you receive this complaint? Was it by phone?

A Yes, by phone.

Q And what was said in that telephone conversation?

A Milton Kean called me, or called E. L. Aaron & Co., called the main trading number, and told me that he was in the middle of the preparations of a 10K and he was about to file it and that Norman Schreiber and Don Jacobson were talking about a tractor and a car -- I don't remember whether he said a tractor or a car or both -- and that it wasn't disclosed in the 10K and that I should go and talk to them and have them stop.

Q Did you ask him if there was in fact a tractor and/or a car?

A All I remember was him saying either a tractor or a car and that was it.

And I said, "I'll talk to them and then get back to you."

Q What did you do after that phone call, if anything?

A I don't know whether I told my father or I didn't tell my father. I don't remember one way or another whether I did or I didn't.

And I called up the Long Island office and I talked to Don Jacobson and I told him the problem and I says, "I think you better go and take care of it and talk to Milt Kean and square it with him."

Q What happened then?

A Maybe a month prior I had seen a picture of the car --

Q Excuse me. I want to know what happened after the phone call to Jacobson, not prior to the phone call to Jacobson.

Did you speak to Jacobson again about that subject?

A I did, and I think my father did, and he said that the problem was taken care of. He didn't elaborate what the problem was

Q After these telephone conversations with Mr. Jacobson, between yourself and Mr. Jacobson, did Jacobson and Schreiber continue to solicit purchases of Lawn-A-Mat stock?

A Yes.

Q Were there any other complaints received by you?

A Not for a long period of time.

Q How long?

A I think about six or seven months, but I'm not positive of the time.

Q Could it have been two or three?

A It could be, but I don't know. I know there was --

Q Who did you get the second complaint from?

A Milton Kean again.

Q What was said at that time?

A Well, "They are doing it again."

Q That's it?

A That's it.

Q What did you do after that, if anything?

A I went and said, "I'll talk to the Long Island people and I'll get back to you."

So I picked up the phone and I talked to the Long Island people.

S think this time I told my father about it.

Q I didn't hear that. Sorry.

A I'm relatively sure I talked to my father about it at this time.

Q After this conversation with Jacobson, did Jacobson try to continue to solicit purchases of Lawn-A-Mat stock?

A Oh, yes.

MR. MANDEL: No further questions.

THE COURT: All right.

We will suspend for lunch.

We will resume at two o'clock.

(Luncheon recess)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

ROBERT LA GRASSA, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 62-20 60' RD MASPETH, N.Y.

That on the 21 day of FEBRUARY, 1978, deponent personally served the within JOINT APPENDIX VOLUME I OF II upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose

~~By leaving _____ true copies of same with a duly authorized person at their designated office.~~

By depositing 1 true cop~~ies~~y of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United States post office department within the State of New York.

Names of attorneys served, together with the names of the clients represented and the attorneys' designated addresses

John Lowy
Harvey L. Pitt, General Counsel
Paul Gonson, Associate General Counsel
Jacob H. Stillman, Principal Assistant General Counsel
Glynn L. Mays, Angela M. Desmond, Counsel for Plaintiff-Appellee
Securities and Exchange Commission, Washington, D.C. 20549

Robert La Grassa

Sworn to before me this
21st day of February, 1978

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979